

Before the
Federal Communications Commission
Washington, D.C. 20554

CS Docket No. 94-48

In the Matter of

Implementation of Section 19
of the Cable Television
Consumer Protection and
Competition Act of 1992

Annual Assessment of the
Status of Competition in the
Market for the Delivery of
Video Programming

NOTICE OF INQUIRY

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I. INTRODUCTION

1. On October 5, 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "Act").¹ Section 19(g) of the 1992 Cable Act directs the Commission to "beginning not later than 18 months after promulgation of the regulations required by [Section 19(c) of the 1992 Cable Act], annually report to Congress on the status of competition in the market for the delivery of video programming."² Because the Commission adopted regulations implementing Section 19(c) on April 1, 1993, the first report must be submitted to Congress no later than October 1, 1994.³ Notice of Inquiry ("NOI") to assist in gathering the information necessary to comply with this statutory requirement.

2. As the Commission noted in the proceedings implementing the rate regulation requirements of the 1992 Cable Act, the Act generally provides that where competition is present, cable television rates shall not be subject to regulation by government, but shall be regulated by the market.⁴ Indeed, the Act contains a clear and explicit preference for competitive resolution of issues where that is feasible.⁵ However, where competition is absent, the Commission is to protect the interests of subscribers by ensuring that cable rates are reasonable. Thus, the provisions in the Act relating to rate regulation by the Commission and local franchising authorities are intended to provide a transitional mechanism until competition develops and consumers have adequate multichannel video programming alternatives.

3. In addition, Sections 12 and 19 of the Act are designed to foster the development of competition to cable operators by requiring that programming be made available to all multichannel video programming distributors on fair terms and conditions.⁶ These sections of the Act are aimed at ensuring that large cable operators do not, through anticompetitive means, limit the ability of unaffiliated video programming vendors to secure carriage on multichannel distribution systems. Promoting the emer-

¹ Pub. L. No. 102-385, 106 Stat. (1992).

² Section 628(g) of the Communications Act of 1934, as amended (hereinafter, the "Communications Act"), 47 U.S.C. § 548(g).

³ See *First Report and Order in Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-265 ("First R&O"), 8

FCC Rcd 3359 (1993), recon. pending.

⁴ *Report and Order and Further Notice of Proposed ("Rate Order")*, MM Docket No. 92-266, 8 FCC Rcd 5631 (1993).

⁵ 1992 Cable Act § 623(a)(2), 47 U.S.C. § 543(a)(2) ("Preference for Competition").

⁶ 1992 Cable Act §§ 616, 628, 47 U.S.C. §§ 536, 548.

gence over time of effective competition by fostering the entry of alternative multichannel video programming distributors is a critical element of the regulatory framework mandated by Congress.

4. Because of the significance of the role of competition in the regulation of cable television service, this statutory reporting requirement imposes upon the Commission a responsibility to engage annually in a significant competitive analysis of the multichannel video programming market. This will enable Congress and the Commission to evaluate the effectiveness of, as well as the continued need for, the regulation of the cable industry required under the Act.

5. Thus, to comply with its statutory directive, the Commission must engage in an ongoing process of evaluating the status of competition to cable television. Accordingly, through this *NOI* we seek to gather the requisite information on the status of the competitive marketplace to prepare our first report to Congress, and to develop a substantive framework and data reference point for future annual reports.

II. PURPOSE OF THE NOI

6. We intend to prepare a preliminary analysis of the development of competition to cable television by various emerging alternative technologies. We recognize, however, that our analysis will be limited primarily to information submitted by interested parties in response to this *NOI*, to publicly available materials, and to limited further information requests from certain parties, if needed. Therefore, this *NOI* also will seek comment on appropriate methods for obtaining the information and data required to prepare future, more comprehensive reports.

7. We also seek to examine the effect that the 1992 Cable Act and our implementing rules, and effect of the changes in the multichannel video marketplace resulting from the Act and rules, have had on the entry and development of competitors in the marketplace. Accordingly, we seek comment on specific conduct and practices relating to the negotiation, sales, marketing, and carriage practices of multichannel video programming distributors, as discussed further herein.

8. The goals of this *NOI* are threefold: (1) to gather information sufficient to prepare a preliminary analysis for Congress of the current state of competition to cable provided by alternative distribution technologies; (2) to collect information on whether and the extent to which the conduct and practices of multichannel video programming vendors and distributors have changed; and (3) to identify the information required to enable the Commission to prepare more comprehensive analyses in our future reports and the appropriate means of obtaining it.

9. Specifically, we seek to establish a reference point for future comparisons of the status of the multichannel video programming marketplace by updating the information contained in Appendix G of our 1990 Cable Report to Congress with respect to horizontal ownership levels and vertical integration.⁷ In addition, we seek to identify the appropriate means of analyzing the relevant programming and distribution markets, and to compile information that will be used to assess the status of effective competition in the market for the delivery of video programming.

10. We believe that the best approach for developing a complete record for such an analysis is to begin by soliciting comment on the relevant analytical scope. Thus, through this *NOI* we also ask commenters to identify and define particular issues relevant to a comprehensive competitive analysis of the multichannel video programming marketplace. Additionally, we invite comment on relevant economic methodologies that may assist the Commission in its analysis of the extent of competition and market performance in both the markets for multichannel distribution systems and video programming. More specifically, the Commission invites comments on (1) the potential usefulness of standard structure-conduct-performance analyses and complementary antitrust concepts, including relevant market definitions and market power concepts;⁸ (2) the potential relevance of contestable market theory and its emphasis on entry barriers, especially sunk costs, as applied to markets for multichannel video distribution systems;⁹ (3) the potential usefulness of transaction cost economics and its emphasis on specific characteristics of a business transaction that may affect the sustainability of market exchange and provide incentives for vertical integrating;¹⁰ and (4) other economic methodologies or principles that the Commission may find useful in its competitive analysis of both the multichannel distribution system and video programming markets. Comments on the potential usefulness of econometric studies of demand and cost are also invited.

11. We recognize that the outcomes of several other ongoing Commission proceedings could affect competition in the multichannel video programming marketplace.¹¹ We emphasize, however, that we do not intend to consolidate any issues that may be pending in those proceedings within this inquiry. Rather, we limit the scope of this proceeding to the three goals discussed.

12. Accordingly, we solicit comment on the appropriate parameters and the specific types of information necessary to engage in our annual competitive analysis. In particular, when addressing proposals for the collection of specific information, we ask that commenters identify any resulting burdens as well as benefits to the public. Thus, we seek comment on the least intrusive means of gathering the necessary information without unduly burdening the information providers.

⁷ *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, MM Docket No. 89-600, 5 FCC Rcd 4962 (1990) ("1990 Report"); see ¶¶ 13-14, *infra*.

⁸ See, e.g., F. M. Scherer and David Ross, *Industrial Market Structure and Economic Performance*, 3d ed. (Boston: Houghton Mifflin, 1990), Chapter One.

⁹ See William J. Baumol, John C. Panzar, and Robert D. Willig, *Contestable Markets and the Theory of Industry Structure*

(New York: Harcourt Brace Jovanovich, 1982).

¹⁰ See, e.g., Oliver E. Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985).

¹¹ See, e.g., MM Docket No. 92-264 (re: ownership); MM Docket No. 92-265 (re: program access); MM Docket No. 93-8 (re: home shopping stations); MM Docket No. 93-21 (re: sports migration); MM Docket No. 93-25 (re: direct broadcast satellite); see also MM Docket No. 92-259 (re: must-carry/retransmission consent) and MM Docket No. 92-266 (re: rate regulation).

III. Fostering Competitive Technologies and Competition in the Market for the Delivery of Video Programming

13. The status of competition in the multichannel video programming marketplace has been a source of regulatory concern for some time. Section 623(h) of the Cable Communications Policy Act of 1984 ("1984 Cable Act") required the Commission to conduct a study of the cable industry's operations under the Communications Act. Based on that study, the Commission was directed to prepare and submit to Congress a report analyzing the effect on the multichannel video programming marketplace of substituting market forces for cable rate regulation.¹² The Commission released its Report on July 31, 1990.¹³

14. In the 1990 Report, the Commission concluded that the cable television industry had become increasingly concentrated and vertically integrated, thereby providing multiple system operators ("MSOs") and vertically integrated cable operators with the opportunity to pursue anticompetitive actions against programming services or competing multichannel providers. Further, the 1990 Report identified specific evidence of anticompetitive conduct.¹⁴

15. Thereafter, Congress enacted legislation to provide increased consumer protection and to foster the development of competition in cable television and related markets.¹⁵ As noted above, a primary goal of the 1992 Cable Act was to promote increased competition in the delivery of cable television services. As "effective competition" develops in individual markets, as that term is defined in the 1992 Cable Act and the Commission's Rules,¹⁶ the Commission can withdraw from the regulation of cable rates. To further this goal, it is necessary to gather information that can be used to identify the extent and growth of effective competition.

16. To gather information necessary for the report required by Section 19(g) of the 1992 Cable Act, we must define the proper focus for tracking the development of effective competition. In that regard, answers to the following questions would be helpful:

(a) Should the Commission examine competition specifically as it relates to cable, and thus define the relevant market for analysis as each existing cable franchise?

(b) Alternatively, should the Commission analyze competition in broader geographic areas, identifying the types of multichannel video programming distributors that serve particular areas and measuring the extent of their distribution and/or penetration?

(c) Are both methods appropriate?

Thus, we seek comment on how to define the relevant market for analysis (e.g., franchise by franchise, state by state, or by metropolitan statistical area), and whether we should examine more than one parameter.

17. As we gather information related to competition, we aim to track its growth and development over time in our annual reports to Congress. With sufficient information, we seek to develop a visual measure such as a color-coded map of the United States that can be updated to track the growth (or decline) of effective competition.

18. For purposes of our first annual report to Congress, however, we seek to make a preliminary assessment of the status of competition at the local level in the video programming marketplace. Competition to cable television is currently provided to a limited extent by "wireless cable" systems,¹⁷ high-power and medium-power direct broadcast satellite ("DBS") services,¹⁸ direct-to-home satellite services, satellite master antenna television ("SMATV") systems, telephone technologies (such as video dialtone), cable overbuilds, and over-the-air television broadcasting. Through this *NOI*, we seek to determine the status of video programming choices available to consumers in a particular location. In addition, commenters are invited to address technological advances that may have an impact on the market for the delivery of video programming.

A. Wireless Cable

1) Multipoint Multichannel Distribution Service (MMDS)

19. In the 1990 Report, we noted that there were 50 or more wireless cable systems serving approximately 300,000 subscribers across the country, with "numerous additional systems planned."¹⁹ The Wireless Cable Association estimates that there were approximately 500,000 wireless cable subscribers by the end of 1993.²⁰ The Commission, in the 1990 Report, identified two additional requirements essential to the continued and successful development of wireless cable as a competitive alternative to cable television systems. The first was to ensure access to programming by wireless operators on non-discriminatory terms and conditions. The second was to eliminate impediments imposed by local authorities, including attempts to impose franchising requirements on wireless operators, local land use restrictions on wireless cable reception and antennas, and local requirements limiting access to buildings.²¹

20. Since the 1990 Report, many regulatory changes have occurred, both legislatively and at the Commission. First, Congress enacted the program access provisions of the 1992 Cable Act. Issues related to changes that may have occurred in the market for distribution of video programming as a result of these provisions are addressed in

¹² Pub. L. No. 98-549, 98 Stat. 2780, codified in Title VI of the Communications Act of 1934, 47 U.S.C. § 521 *et seq.*, § 543(h) ("Communications Act").

¹³ See 1990 Report, *supra*.

¹⁴ *Id.* at 5006, 5008, and 5021.

¹⁵ See Preamble to 1992 Cable Act, p. 1.

¹⁶ See 1992 Cable Act, Section 623(l), 47 U.S.C. § 543(l).

¹⁷ By "wireless cable," we mean multipoint distribution ("MDS"), multichannel multipoint distribution service ("MMDS"), and local multipoint distribution service ("LMDS").

¹⁸ For purposes of this *NOI* only, we group together both medium-power service, governed by Part 25 of the Commis-

sion's rules concerning fixed satellite service ("FSS"), and high-power DBS, governed by Part 100 of the Commission's rules. See 47 C.F.R. §§ 25.101 *et seq.* and 100.1 *et seq.*

¹⁹ See 1990 Report at 5014.

²⁰ Andrew Kreig, "Wireless Cable '94 Service Predicted In 23 of 25 Top ADI TV Markets," *Spectrum*, at 1.

²¹ See 1990 Report at 5015-5016. With respect to local regulation of access to buildings, the 1990 Report noted that in thirteen states and the District of Columbia, "mandatory access" laws existed that required mandatory access to buildings for franchised cable operators, but generally not for other multichannel video providers.

Section V of this *NOI*.²² In addition, the Commission has recently determined that future MMDS license applications which are mutually exclusive will be subject to the competitive bidding process.²³

21. As for access to buildings by alternative programming distributors, the 1992 Cable Act's provisions with respect to home wiring were designed to allow subscribers to utilize the wiring inside their homes with an alternative multichannel video delivery system.²⁴ We seek comment on the adequacy of this legislative solution, and its current impact on the development and competitiveness of wireless cable systems. To the extent that access to buildings continues to pose an impediment to competition from wireless cable operators, we ask commenters to propose recommendations to Congress that could be included in our report.

22. Moreover, since the 1990 Report, the Commission has taken steps, independent of legislation, to improve the ability of wireless cable operators to provide viable competition to cable. In General Docket Nos. 90-113 and 90-54,²⁵ the Commission:

- a) reduced the minimum programming requirements for new Instructional Television Fixed Service ("ITFS") licensees from 20 hours per channel per week to 12 hours per channel per week for the first two years of operation;²⁶
- b) increased the maximum ITFS and MDS transmitter output so that signal strength would consistently reach 15 miles;²⁷
- c) authorized the use of signal boosters so that operators could serve areas without line-of-sight to the transmitter;²⁸
- d) removed ownership restrictions so that a single operator may acquire a license for both groups of four MMDS channels and also may acquire more than one Operational Fixed Service ("OFS") channel in a single market;²⁹
- e) eliminated time-of-day and day-of-week restrictions on ITFS programming requirements;³⁰
- f) permitted wireless cable operators to use channel mapping technology, which allows the wireless operator to provide uninterrupted programming on the channels it leases from ITFS licensees while also permitting the ITFS licensees to fulfill their per channel per week programming requirements;³¹ and

g) adopted rules aimed at reducing the incentive for "application mills" to flood the Commission with MMDS applications.³²

23. Moreover, the Commission has issued a *Notice of Proposed Rule Making* on whether ITFS licensees should be permitted to load all of their required programming on one of the four ITFS channels, in place of the per channel programming requirements now in place.³³ Finally, the Commission is considering adopting rules which would create a "window," which would limit the filing period for ITFS applications.³⁴

24. We seek information from commenters on the status of competition from wireless cable operators, and the reasons for this level of competition. If such information is not readily available, we ask that commenters propose the appropriate means for obtaining such information. Specifically, we would like commenters to address the following questions:

- (a) How many wireless cable systems currently exist and are providing service to subscribers? Where are these wireless systems located? How many compete with cable systems?
- (b) How many subscribers does each wireless operator serve? What is the total estimated subscriber base for each operator? What is the basis for this estimate? How is each wireless system marketed to subscribers?
- (c) In areas of competition between wireless and cable systems, what is the approximate market share of each operator? On what is this estimate based? What is the penetration of each wireless operator and each competing cable operator?³⁵
- (d) How many wireless systems are currently under development, and what is the projected date for initiation of service for each? How many of these developing wireless systems will directly compete with cable systems?
- (e) What percentage of the service area of the developing wireless system and what percentage of the service area of the competing system will constitute the area of overlap? How many potential subscribers live within the overlap area? What is the basis for this estimate?
- (f) What is the projected subscriber level for each system within one year of initiation of service? Within three years? What is the basis for this projection?

²² See ¶¶ 65-71, *infra*.

²³ *Second Report and Order*, PP Docket No. 92-253, (rel. April 20, 1994), at para. 62.

²⁴ See 1992 Cable Act, Section 16(d), 47 U.S.C. 544(i).

²⁵ See *Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410 (1990).

²⁶ *Id.* at 6416.

²⁷ *Id.* at 6418.

²⁸ *Id.* at 6422-23.

²⁹ *Id.* at 6411-12.

³⁰ See *Private Operational-Fixed Microwave Service, Multipoint*

Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service, 6 FCC Rcd 6764, 6773-74 (1991), *recon. pending*.

³¹ *Id.* at 6774.

³² See Parts 1, 2 and 21 of the Commission's *Rules Governing the Use of Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444 (1993), *recon. pending*.

³³ *Instructional Television Fixed Service*, 8 FCC Rcd 2828 (1993).

³⁴ *Instructional Television Fixed Service*, 8 FCC Rcd 1275 (1993).

³⁵ By "penetration," we mean the actual number of subscribers as a percentage of the total number of potential subscribers. Commenters are requested to include separate figures for total penetration, and penetration within the area of overlap.

(g) What is the channel capacity of each existing and projected wireless system? What is the channel capacity of each competing cable system?

(h) How long is it likely to take for wireless cable to serve as a competitive alternative to cable? On what facts is this projection based?

(i) What impediments are there to the development of wireless cable as a competitive alternative to cable?

25. We seek comment on how the prices charged to consumers for subscriptions to wireless systems compare to prices charged by cable systems, both in general and specifically where there is competition between cable operators and wireless operators. We seek suggestions as to how the Commission can gather reliable information about consumer expenditures on cable television provided by cable systems and by wireless systems. Moreover, we seek comment on the relevance of such information to our competitive analysis.

2) Local Multipoint Distribution Service (LMDS)

26. Since the 1990 Report, another delivery system for multichannel video programming has been developed. In 1991, the Commission authorized the Suite 12 Group to provide multichannel video service in New York City using millimeter wave technology.³⁶ After granting this authorization, the Commission received over 900 applications accompanied by petitions for waivers from entities seeking to provide similar service. The Commission decided to institute a formal rulemaking proceeding to determine whether the 27.5 - 29.5 GHz band ("28 GHz band") should be redesignated from terrestrial point-to-point services to terrestrial point-to-multipoint services in order to accommodate multichannel video service, among other proposed uses.³⁷

27. Comments received in response to the *Notice of Proposed Rulemaking* in this docket indicated widespread interest in point-to-multipoint use of the 28 GHz band for multichannel video service as well as two-way voice and data services. However, several satellite entities argued that use of the 28 GHz band by LMDS operations would cause interference with fixed satellite service. Because of the Commission's desire to accommodate all potential users of this frequency band, and because of the highly technical coordination issues involved with the proposed 28 GHz services, the Commission proposed that a negotiated rulemaking be conducted for the purpose of negotiating proposed regulations to govern this band.³⁸ Based on the commenters' support, the Commission has requested General Services Administration ("GSA") approval to establish a negotiated rulemaking. If approved, the parties to the negotiated rulemaking will be charged with proposing technical rules which permit sharing of the 28 GHz band. If it

is determined that sharing is not possible, the Commission has stated that it will seek to develop a record to ascertain the economic growth potential of the different proposals, and to identify specific public interest concerns on which it can base its selection from among the competing proposals.

28. If the Commission ultimately concludes that the 28 GHz band may be used for LMDS, we will include LMDS in our report to Congress. However, even if the 28 GHz proceeding is not resolved prior to our report deadline, we nevertheless invite commenters to discuss the appropriate means of addressing LMDS as a potential competitor to cable in our report to Congress.

B. Direct-to Home Satellite Services

1) Direct Broadcast Satellite (DBS)

29. In our 1990 Report, the Commission estimated that DBS would begin service in three to five years. However, in late 1990, Primestar Partners ("Primestar") began offering service using an existing medium-power satellite to provide video programming. Primestar currently provides 10 channels of analog service to approximately 70,000 customers, and it expects to offer more than 70 channels when its subscribers' current receivers are replaced with digital decompression boxes.³⁹ Primestar expects its expanded service to be available by late summer 1994. Primestar's subscribers must use a receiving dish which is approximately 36 to 40 inches in diameter. While Primestar does not charge for the receiving dish, customers pay \$100-200 for installation.

30. The arrival of high-power DBS appears imminent. General Motors/Hughes (operating as DirecTV) launched a satellite in December 1993 and expects service to begin in May or June 1994. Five of the 16 transponders on the satellite are leased to United States Satellite Broadcasting (USSB) while the remaining 11 transponders belong to DirecTV. When DirecTV launches its second satellite (scheduled for September 1994), it expects to offer 150 channels of digitally compressed video programming, which includes approximately 40 channels of pay-per-view movies and 30 channels of pay-per-view sports. USSB will offer 20 channels of digitally compressed programming on its five transponders, and also expects to begin transmitting in May or June 1994. Subscribers to high-power DBS service will use a receiving dish which is 18 inches in diameter, and will initially retail for \$699 (plus \$100-\$200 for installation). There are seven other entities that have received construction permits from the Commission.⁴⁰ Commission rules require these permittees to make their systems operational within six years of receiving a conditional construction permit.⁴¹ The operational deadlines for these seven permittees occur between mid-1995 and mid-1998.

³⁶ *Hye Crest Management, Inc.*, 6 FCC Rcd 332 (1991). The 27.5 - 29.5 GHz frequency band is allocated for point-to-point microwave radio common carrier service. The 28 GHz band is also allocated on a co-primary basis to fixed satellite services.

³⁷ See *Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service*, 8 FCC Rcd 557 (1993), recon. pending.

³⁸ *Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5 - 29.5 Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service*, 9 FCC Rcd 1394 (1994).

³⁹ Rich Brown, "Dishing Up Full-Power DBS," *Broadcasting & Cable*, Mar. 28, 1994, at 48.

⁴⁰ These parties are Advanced Communications Corp., Continental Satellite Corp., Direct Broadcasting Satellite Corp., Directsat Corp., Echostar Satellite Corp., Tempo Satellite, Inc., and Dominion Video Satellite, Inc.

⁴¹ 47 C.F.R. § 100.19(b).

31. We seek information from commenters on the status of competition from both medium-power and high-power DBS services, and on the reasons for this level of competition. To the extent that information is not readily available, we ask commenters to propose the appropriate means of obtaining such information. Specifically, we would like commenters to address the following questions:

With respect to medium-power DBS service:

- (a) Is the 70,000 subscriber figure current, and where are these subscribers located?
- (b) How many subscribers are located in areas served by cable operators? What factors account for cable subscribers' choice to receive DBS?
- (c) What is the total estimated potential subscriber base and the basis for this estimate? What is the projected subscriber level within one year, within three years, and what is the basis for these projections?
- (d) What is the total estimated channel capacity of the service?
- (e) Is the current installation charge an impediment to attracting subscribers? How do the prices charged for this service compare with the prices charged for cable service?
- (f) Are the prices nationally uniform, or do they vary depending on the location of the subscriber? If they vary, what are the reasons for the price differentials?
- (g) Are any additional companies planning to offer medium-power DBS service? If so, when will any additional service become available to subscribers?
- (h) How are the services marketed? Are current marketing efforts targeted equally to potential subscribers in areas served by cable systems as well as to areas unserved by cable systems? If not, why not?
- (i) How long is it likely to take for medium-power DBS to serve as a competitive alternative to cable service? What is the basis for this projection?

With respect to high-power DBS service:

- (a) What is the total estimated subscriber base for each operator? What is the basis for this estimate?
- (b) What is the total estimated channel capacity of each operator? What are the plans of each operator to increase the digital compression ratio from the initial ratio used at the time of launch (so as to offer more channels at a later date)?
- (c) How does each operator market its services? Are current marketing efforts targeted equally to potential subscribers in areas served by cable systems as well as to areas unserved by cable systems? If not, why not?

(d) What is the projected subscriber level for each operator within one year of launch of service? Within three years? What is the basis for these projections?

(e) In what circumstances are multiple decoders required? Is the current cost of installation and equipment an impediment to attracting subscribers?

(f) How will prices charged by each operator for this service compare with the prices charged for cable service?

(g) Are prices nationally uniform, or do they vary depending upon the location of the subscriber? If they vary, what are the reasons for the pricing differentials?

(h) How long is it likely to take for this service to serve as a competitive alternative to cable? What is the basis for this projection?

2) Home Satellite Dishes (HSDs)

32. In the 1990 Report, the Commission observed that Home Satellite Dish ("HSD") use in the United States had grown from approximately 900,000 units in 1984 to roughly 2.8 million units at the time of the Report.⁴² The 1990 Report observed that the growth of HSD sales stalled in 1986 upon the advent of satellite signal scrambling. Prior to scrambling, HSD sales had reached a rate of almost 750,000 per year, growing five-fold in a three year period.⁴³ Moreover, the 1990 Report noted that the Satellite Broadcasting and Communications Association of America ("SBCA") had advised the Commission that HSDs would provide an effective alternative to cable service because more programming is available to HSD users than to cable subscribers.⁴⁴

33. The 1990 Report noted, however, that HSD service is considerably more expensive for subscribers than cable service, and also requires reception equipment costing \$2,000 - \$3,000.⁴⁵ In addition to the high cost of HSD reception equipment, the report noted that zoning regulations or physical limitations could so restrict many viewers that they would be unable to install HSDs at any price.

34. We seek information from commenters on the status of, and reasons for, competition from HSD service providers. To the extent that such information is not readily available, we ask that commenters propose the appropriate means for obtaining such information. Specifically, we would like commenters to address the following questions:

(a) What is the current number of installed HSDs, and how are HSD services marketed to subscribers? How many channels of programming are available to HSD users?

(b) Where are these HSD users located? How many HSD users live within an area served by a cable system?

⁴² See 1990 Report at 5016-5017. For purposes of clarity, DBS customers, who will also use satellite dishes for reception, are not to be included in discussions or information related to such

HSD users. See Section III(B)(1), *supra*.

⁴³ *Id.*

⁴⁴ *Id.* at 5016, n.1

⁴⁹

⁴⁵ *Id.* at 5017, n.150.

(c) How have costs for HSD receivers changed? Do such costs provide a barrier to subscriber use of HSDs?

(d) Have any changes in the physical size of the HSD receivers had an impact on their cost to subscribers? Has the fact that HSD receivers are now smaller in size had any effect on subscriber demand?

(e) What is the projected growth of HSD use in the next year? Three years? What is the basis for this projection?

35. In addition, we seek comment on how the prices charged to HSD users for programming compare to prices charged by cable systems. How can the Commission gather reliable information pertaining to consumer expenditures on video programming provided by cable systems and by HSD users? Moreover, how relevant is such information to our competitive analysis?

36. Finally, to what extent are local zoning or other local regulations an impediment to the development or expansion of HSDs? Is the Commission's limited preemption of such local rules adequate to encourage expansion of HSD use?⁴⁶

C. Satellite Master Antenna Television Systems (SMATV)

37. In 1989, the Commission determined that SMATV operators collectively served about a half million subscribers, down from a high of one million in 1987.⁴⁷ Further, we noted that the National Private Cable Association ("NPCA") claimed a potential market for SMATV operators of 17 to 22 million subscribers.⁴⁸ The 1990 Report indicated that several SMATV operators had informed the Commission that a variety of local regulations and practices had severely restricted their ability to operate and to compete.⁴⁹ SMATV operators also viewed the Commission's definition of a "cable system" as a regulatory impediment to SMATV service because it restricts their ability to expand their service beyond commonly-owned facilities separated by a public right-of-way.

38. In 1990, the Commission concluded that the "cable system" definition appropriately encompassed video distribution systems utilizing wires physically installed in public rights of way.⁵⁰ With respect to distributors that make no use of public rights of way, the Commission excluded from the definition all distributors employing wireless transmissions (such as MMDS and DBS), as well as those systems employing wired transmissions that served a single multi-unit dwelling or dwellings under common owner-

ship, control or management.⁵¹ SMATV systems connecting separately owned multi-unit dwellings by wire, however, were deemed "cable systems."⁵²

39. We seek information from commenters on the status of, and reasons for, competition to cable operators provided by SMATV systems. To the extent that such information is not readily available, we ask that commenters propose the appropriate means for obtaining such information. Specifically, we would like commenters to address the following questions:

(a) How many SMATV systems currently exist and are providing service to subscribers? Where are these SMATV systems located? How many compete with cable systems?

(b) How many subscribers does each system serve? What is the total estimated subscriber base for each SMATV operator? How are SMATV services marketed to subscribers?

(c) In areas of competition between SMATV systems and cable systems, what is the approximate market share of each operator? On what is this estimate based? What is the penetration of each SMATV operator and each competing cable operator?⁵³

(d) What is the channel capacity of each existing and projected SMATV system? What is the existing and projected future channel capacity of any competing cable system?

(e) How many SMATV systems are currently under development, and what is the projected date for initiation of service? What is the projected subscriber level for each developing system within one year, and three years, of initiation of service? What is the basis for this projection? How many of these developing SMATV systems will compete with cable systems?

40. In addition, we seek comment on how the prices charged to consumers for subscriptions to SMATV systems compare to prices charged by cable systems, both in general and specifically where there is competition between cable and SMATV operators. How can the Commission gather reliable information pertaining to consumer expenditures on cable television and on services provided by SMATV systems? Moreover, we seek comment on the relevance of such information to our competitive analysis.

⁴⁶ See 47 C.F.R. § 25.104, which preempts state and local zoning or other regulations that unreasonably differentiate between satellite receive-only antennas and other types of antenna facilities. See also *Town of Deerfield v. FCC*, 992 F.2d 420 (2d Cir. 1993) (holding that Commission cannot require parties to exhaust judicial remedies before seeking administrative relief). The Commission also has pending a petition for declaratory ruling from SBCA, filed April 16, 1991, seeking to clarify areas of uncertainty under § 25.104.1

⁴⁷ See 1990 Report at 5018-5019.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5019.

⁵⁰ See *Definition of a Cable Television System*, 5 FCC Rcd 7638 (1990).

⁵¹ *Id.*

⁵² In *FCC v. Beach Communications, Inc.*, 113 S. Ct. 2096

(1993), the Supreme Court found a sufficient rational basis under the Constitution's Equal Protection Clause for the 1984 Cable Act's distinction between SMATV systems that serve separately owned or co-owned multi-unit buildings, but remanded the case with respect to the appropriate standard of review. On remand, the D.C. Circuit dismissed the petition, determining that there was no basis for application of a heightened scrutiny standard. *Beach Communications, Inc. v. FCC*, No. 91-1089 (D.C. Cir.) (Oct. 22, 1993).

⁵³ With respect to penetration, commenters are requested to include separate figures for total penetration, and penetration within the area of overlap. See n.35 for definition of penetration.

D. Local Exchange Carriers (LECs)

41. In the 1990 Report, we did not include local telephone exchange carrier participation in the multichannel video marketplace in our analysis of competition, concluding that such participation was unlikely to occur in the near term.⁵⁴ Within the past four years, however, significant changes have occurred which warrant inclusion of LECs in our analysis of competition in the multichannel video marketplace.

42. LECs currently are statutorily prohibited from providing video programming directly to subscribers within their service areas.⁵⁵ However, in July 1992, the Commission adopted rules authorizing LECs to offer video dialtone service, which permits LECs to participate in the video marketplace consistent with the statutory prohibition.⁵⁶ Pursuant to this authorization, a LEC may provide the transmission path for video programming on a common carrier basis, while an unaffiliated entity supplies the programming.

43. Since adoption of the video dialtone framework, we have granted applications by different LECs for technical and market trials of video dialtone in several markets.⁵⁷ Several LECs also have filed applications for permanent commercial video dialtone service. In addition, Congress is considering legislation to repeal the telephone company-cable cross-ownership restriction,⁵⁸ and several LECs have challenged the constitutionality of the restriction in federal district courts throughout the United States.⁵⁹

44. We recognize that many aspects of the video dialtone policy as expressed in both the *First* and *Second Report and Order* are challenged in reconsideration petitions and appeals. In addressing video dialtone in this *NOI*, we do not open any of the issues raised in CC Docket No. 87-266. We merely request information regarding video dialtone which will aid in the development of a report on competition in the multichannel video marketplace. We will not consider comments that argue the merits of matters currently on reconsideration in the video dialtone docket. We also are not consolidating this *NOI* with any aspect of the video dialtone proceeding.

45. We recognize that the outcome of this *NOI* and our report on the status of competition provided by video dialtone in the multichannel video marketplace may be affected by matters currently pending before the Commission, the courts and Congress. Consequently, we seek comment upon how we should approach and address video dialtone in the context of our report on competition. For example, commenters are asked to address the following questions:

(a) Should we seek competitive analysis information from the LECs conducting video dialtone market and technical trials? To what extent is such data proprietary or confidential?

(b) Are numbers of subscribers to a basic platform relevant to our inquiry? What other information, if any, pertaining to subscribers would aid our understanding of the competitive impact of video dialtone?

(c) Should non-video and other programming services with a video component (e.g., data, text, informational) provided over the video dialtone platform be included in our analysis, or should we focus solely on video programming offerings?

(d) What type of information pertaining to program suppliers should we examine?

(e) What is the appropriate means of comparing prices charged to subscribers for video dialtone and video programming services to prices charged to subscribers for cable? What information do we need to solicit to make such a comparison and is such a comparison feasible?

46. Because video dialtone is a nascent service, we believe it premature at this juncture to seek specific subscription data. However, we invite commenters to address the following issues with respect to the development of direct competition from video dialtone providers:

(a) Has the adoption of the Commission's video dialtone policy affected the development of new programming sources? How long is it likely to take for video dialtone to serve as a competitive alternative to cable?

(b) If traditional telephone technology (twisted pair copper wiring) is utilized to deploy broadband services, is it feasible for video dialtone to serve as a competitive alternative to cable?

(c) When will technologies such as digital compression and broadband switching be readily available in the market?

E. Cable Overbuilds

47. In the context of adopting rate regulation rules and policies pursuant to the 1992 Cable Act,⁶⁰ we note that the Commission sought to design an appropriate rate regulation mechanism that would require noncompetitive systems to set rates at reasonable levels. To do this, the Commission conducted a "Competitive Survey" by selecting a random sample of cable systems from which it sought information

⁵⁴ See 1990 Report at 5019.

⁵⁵ Communications Act, § 613(b); 47 U.S.C. § 533(b).

⁵⁶ *Telephone Company-Cable Television Cross-Ownership Rules*, Sections 63.54 - 63.58, 7 FCC Rcd 5781 (1992), recon. pending, appeal pending sub nom., *Mankato Citizens Telephone Company v. FCC*, D.C. Cir. No. 92-1404.

⁵⁷ See, e.g., *Chesapeake and Potomac Telephone Company of Virginia*, 8 FCC Rcd 2313 (1993); *New York Telephone Co.*, 8 FCC Rcd 4325; *U.S. West Communications, Inc.*, 9 FCC Rcd 184 (1993); *Southern New England Telephone Co.*, FCC 93-473, November 12, 1993; *Rochester Telephone Co.*, DA 94-275, March 25, 1994.

⁵⁸ H.R. 3636, 103rd Cong., 1st Sess., 139 Cong. Rec. E-3114 (1993) and S. 1822, 103rd Cong., 2nd Sess., 140 Cong. Rec. 771-788 (1994).

⁵⁹ In *Chesapeake and Potomac Tel. Co. v. U.S.*, 830 F. Supp. 909 (E.D. Va. 1993), *Amended Final Order*, Civ. No. 92-1751-1 (Oct. 7, 1993), appeal docketed, Nos. 93-2340 and 93-2341 (4th Cir. Oct. 15, 1993), the court held Section 533(b) of the Communications Act unconstitutional as applied to Bell Atlantic within its service area.

⁶⁰ See, e.g., *Rate Order*, supra.

concerning current prices, past prices, and system characteristics.⁶¹ The sample of cable systems included, among other systems, those that face actual competition from at least one other multichannel video service provider ("overbuilds"). For purposes of the Competitive Survey, the Commission identified forty-six cable systems that met the definition of an overbuild system.⁶²

48. We seek further and more comprehensive information on overbuilds: specifically, on the status of competition from cable overbuilds and the reasons for any change in the status of cable overbuilds since both the 1992 Competitive Survey and our 1990 Report. To the extent that information is not readily available, we ask that commenters propose the appropriate means for obtaining such information. More specifically:

(a) How many cable operators face competition from cable overbuilds? How does each cable overbuild market its services to subscribers?

(b) Where are the cable overbuilds located? How many subscribers are served by each incumbent system facing such competition? How many subscribers are served by each cable overbuild?

(c) What percentage of the area served by each cable overbuild and what percentage of the area served by each incumbent cable system constitutes the area of overlap?

(d) How many potential subscribers live in the area of overlap? What is the penetration of each cable overbuild, and the penetration of each incumbent cable system, both in total service areas and in areas of overlap?

(e) How many cable overbuilds are currently authorized and unbuilt? Why are they unbuilt?

(f) What is the potential subscriber base for each cable overbuild currently under construction? What is each overbuild's projected subscriber level within one year of initiation of service? Within three years? What is the basis for this projection?

(g) What is the channel capacity of each existing and unbuilt cable overbuild? What is the present and projected future channel capacity of each competing incumbent system?

49. Pursuant to the 1992 Cable Act, a franchising authority may not grant an exclusive franchise or unreasonably refuse to award an additional competitive franchise.⁶³ We request comment on the following questions regarding the relationship between exclusive franchises and overbuilds:

(a) What has been the effect of the statutory prohibition against exclusive franchises? Has this encouraged entry by overbuilds?

(b) Is there a relevant distinction between a municipal cable system and an independent overbuild system?

(c) What technical or economic barriers make it difficult for an overbuild system to enter a local cable market? To what extent does the local cable franchising process work to the disadvantage of an overbuild system, notwithstanding the provisions of the 1992 Cable Act?

(d) What cost disadvantage or advantages does the overbuild system experience on entering a local cable market currently served by an existing cable system? If a cost disadvantage does exist, to what extent is it attributable to local franchising requirements, federal regulations, securing rights-of-way, or other legal or policy factors?

(e) What sales or marketing disadvantage does the overbuild system experience on entering a local cable market currently served by an existing cable system? If such disadvantages exist, how are they overcome? How long, in general, does it take to overcome such disadvantages?

F. Over-the-air Television Broadcast Service

50. Conventional over-the-air television broadcasting, depending on the particular geographic and other circumstances involved, exists as a competitor to cable service, as a supplier of programming for cable system distribution, or both. While we have concluded in our recent proceedings that over-the-air broadcasting is not, by itself, an "effective competitor" to the full range of regulated basic and cable programming service offerings,⁶⁴ we have not discounted the existence of broadcasting service, in combination with other video delivery systems, as contributing toward competition in the video distribution market. A significant proportion of the public continues to rely on over-the-air service exclusively as its source of television programming, and over-the-air stations distributed by cable continue to garner a majority of the viewing time of cable subscribers. Thus, we believe that the contribution of the over-the-air television service to the development of effective competition to cable service warrants inclusion in our analysis.

51. For purposes of this *NOI*, we seek information regarding how changes in the video marketplace are affecting the competitive relationship between cable operators and terrestrial broadcasters. We also seek comment on the degree to which broadcasting service, particularly in conjunction with multichannel distribution services, exerts a constraining influence on the market power of cable systems. Further, as we noted in the *Rate Order*,⁶⁵ traditional broadcasters may at some point, through the development of digital television compression technologies, be in a position to compete with cable systems as "multichannel" video providers through the multiplexing of several video programs on a single video channel. Digital transmission systems may also make it possible to correct a number of the reception defects, such as "ghosting" or noise, asso-

⁶¹ On December 10, 1992, the Commission adopted an *Order*, in MM Docket No. 92-266, 8 FCC Rcd 226, which required certain selected cable system operators to provide subscriber rates and other information for their cable community units

and the cable systems to which they belong.

⁶² See Appendix E of *Rate Order*, *supra*.

⁶³ See 1992 Cable Act, § 7(a)(1), 47 U.S.C. § 541(a)(1).

⁶⁴ See, e.g., *Rate Order*, 8 FCC Rcd at 5652-5653.

⁶⁵ 8 FCC Rcd 5631, 5652-53 (1993).

ciated with conventional broadcasting. Thus, commenters are asked to provide information that will assist us in projecting how these developments will influence the competitive relationships involved.

G. Technological Advances

52. We would like commenters to address significant technological advances in the multichannel video programming arena that they believe will have a significant impact on the marketplace. For example, at what point will technologies with compression capabilities become a competitive factor in the marketplace? We seek comment on the competitive effects that compression technology may have on video distribution technologies. Specifically, what will be the effect of digitally compressed services, such as expanded programming options, multiplexed pay networks, digital stereo and near video-on-demand movies, on the marketplace?⁶⁶ What will be the competitive effects of advances in encryption technology on the provision of subscription services? What competitive effects will advanced television (ATV) and interactive services have on the video distribution marketplace?

53. We also ask commenters to identify other emerging potential providers of video programming, such as electric or other utility companies. What are the implications of the entry of such distributors on competition in the video programming marketplace?

54. In addition, we request comment on the implications for the widespread availability of video services that may arise from the combination of ongoing technological developments and existing Commission regulations. What are the implications of these technological changes for the provision of locally-produced or originated programming as compared to nationally-produced services?

IV. Trends in Horizontal Concentration and Vertical Integration in the Multichannel Video Programming Marketplace

55. In the 1992 Cable Act, Congress mandated the establishment of limits on the number of channels on a cable system that can be occupied by a video programming vendor in which a cable operator has an attributable interest, and on the number of cable subscribers a person is authorized to reach through cable systems owned by such person or in which such person has an attributable interest.⁶⁷ Congress further addressed the appropriateness of

imposing limitations on the degree to which multichannel video programming distributors may create or produce video programming.⁶⁸

56. In order to establish the ownership and channel occupancy limits mandated by Section 11 of the 1992 Cable Act, Congress directed the Commission to:

- (a) ensure that no cable operator or group of cable operators can unfairly impede the flow of video programming from the programmer to the consumer;
- (b) ensure that cable operators do not favor affiliated video programming vendors in determining carriage and do not unreasonably restrict the flow of video programming of affiliated video programming vendors to other video distributors;
- (c) take account of the market structure, ownership patterns, and other relationships of the cable industry;
- (d) take into account any efficiencies and other benefits that might be gained through increased ownership or control;
- (e) make rules and regulations that reflect the dynamic nature of the communications marketplace;
- (f) impose no limitations that prevent cable operators from serving previously unserved rural areas; and
- (g) impose no limitation that will impair the development of diverse and high quality programming.⁶⁹

57. On September 23, 1993, the Commission implemented Section 11(c)(2) of the 1992 Cable Act by prescribing national subscriber limits and channel occupancy limits.⁷⁰ The Commission established a thirty (30) percent limit on the number of homes passed nationwide that any one entity can reach through cable systems in which such entity has an attributable interest, and adopted a forty (40) percent limit on the number of channels that can be occupied on a vertically integrated cable system by video programming vendors in which the cable operator has an attributable interest.⁷¹ These limits were intended to promote diversity, and to encourage competitive dealings between cable programming services and cable operators and between cable programming services and competing video distributors.⁷² We note that various issues pertaining to these specific limits have been raised in reconsideration petitions.⁷³

⁶⁶ See Tom Kerver, "Riding on the 'Headend in the Sky,'" *Cablevision*, March 14, 1994, p. 38.

⁶⁷ See 1992 Cable Act, § 11(c); 47 U.S.C. § 533(f)(1); Communications Act, § 613(f)(1).

⁶⁸ See 1992 Cable Act, § 11(c), Communications Act, § 613(f)(1)(C); 47 U.S.C. § 533(f)(1)(C).

⁶⁹ See Communications Act, § 613(f)(2), 47 U.S.C. § 533(f)(2); 1992 Cable Act, § 11(c).

⁷⁰ See *Second Report and Order in Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992*, ("Second Report and Order on Horizontal and Vertical Ownership Limits.") MM Docket No. 92-264, 8 FCC Rcd 8565 (1993), *recon. pending*.

⁷¹ To promote diversity of viewpoints, the Commission also adopted rules permitting ownership of additional cable systems, up to thirty-five (35) percent of homes passed nationwide, and allowing carriage of vertically integrated programming on forty-

five (45) percent of a system's channel capacity if the system and the programming service, respectively, are minority-controlled.

⁷² The Commission stayed implementation of the horizontal ownership restrictions pending judicial resolution of the U.S. District Court decision in *Daniels Cablevision v. United States* ("Daniels") that the statutory imposition of horizontal restrictions is unconstitutional. 835 F. Supp. 1 (D.D.C. 1993). The *Daniels* court, however, upheld the statutory imposition of vertical restrictions. *Id.* at 12.

⁷³ See, e.g., *Petition for Reconsideration of Center for Media Education and Consumer Federation of America*, filed December 15, 1993, and *Petition of Bell Atlantic for Limited Reconsideration*, filed December 15, 1993, in MM Docket No. 92-264.

58. To analyze the status of competition in the multichannel video programming marketplace, we believe it will be useful to compile data that will create a baseline of the current extent of horizontal ownership by MSOs and the current level of vertical integration in the cable programming industry. An appropriate baseline will enable us to track future developments and changes in the distribution of multichannel video programming and may be particularly important given the dynamic and fluid nature of the communications marketplace.

59. As a starting point, we request that commenters provide information necessary to update the information and tables pertaining to horizontal ownership and vertical integration in the cable industry contained in Appendix G of the 1990 Report.⁷⁴ In establishing the current subscriber and channel occupancy limits of Sections 76.503 and 76.504 of the Commission's Rules, substantial reliance was placed upon the information set forth in the 1990 Report. In the *Second Report and Order on Horizontal and Vertical Ownership Limits*, the Commission noted that we will review the subscriber limitations every five years to determine whether the limits are reasonable under prevailing market conditions, and whether the limits continue to serve the objectives for which they were adopted.⁷⁵ We believe the creation of a baseline will enable us not only to provide a comprehensive report to Congress pursuant to Section 19(g) of the 1992 Cable Act, but will aid our periodic review of the appropriateness of subscriber limits in accordance with the *Second Report and Order*.

60. For purposes of submitting the following information and data in order to update the information contained in the 1990 Report, please refer to the attribution rules and definitions utilized in the Commission's rules governing horizontal and vertical ownership.⁷⁶ Commenters are requested to provide current information on:

- (a) the number of subscribers to cable systems in which each MSO has any interest, reporting separately for systems in which the MSO has both a controlling and non-controlling interest;
- (b) the number and identity of cable programming services (exclusive of local origination channels) in which MSOs have an ownership interest;
- (c) the names and board affiliations of all of the MSOs' board members who also serve on the boards of other cable, broadcast, program production, or other communications companies (including telecommunications companies);
- (d) the identity of all minority-owned and minority-controlled MSOs and cable programming services; and
- (e) the identity of the MSOs that hold interests in cable programming services, a description of the amount and type of such interests, and the date on which the interest was acquired, identifying, in particular, any changes that have occurred since passage of the 1992 Cable Act.

61. We propose to gather information on the existence and extent of affiliations, including but not limited to investments, joint ventures, and partnerships, between multichannel video programming distributors and other communications companies. Examples of such affiliations include the investment by U.S. West in Time Warner Entertainment, Comcast's ownership interest in cellular telephone operations, TCI and Microsoft's interactive television test, and the partnership interests of several MSOs in Primestar's⁷⁷ direct-to-home satellite service.

62. Commenters are asked to address the relevance and impact of such investments and affiliations on the status of competition in the market for multichannel video programming. To the extent that commenters believe such information is relevant, how should the Commission collect such data in the least burdensome manner? We request comment on whether the Commission can reasonably expect voluntary disclosure of such affiliations.

63. Moreover, now that the Commission has adopted various structural and conduct regulations in compliance with the 1992 Cable Act, we propose examining the impact upon programming services, if any, that has occurred as a result of the interplay between those limitations. Thus, we seek comment on the following questions:

- (a) Has leased access provided a carriage outlet for programming services unable to secure carriage on an MSO's system?
- (b) Have cable systems' must carry obligations affected unaffiliated programmers' access to carriage?
- (c) Have the financial interest and exclusivity rules had any impact upon unaffiliated programming vendors' ability to secure carriage by MSOs?
- (d) Has the ability of programming vendors, both affiliated and unaffiliated, to secure carriage, been affected by channel occupancy restrictions?
- (e) What aspects of the interplay between subscriber and channel occupancy limits should we examine for purposes of ascertaining impacts upon the development of new programming services?
- (f) Are there aspects of the horizontal or vertical ownership limitations, whether working together or independently, that have affected the development of new programming services?
- (g) What changes, if any, have occurred in programming vendors' ability to reach desired numbers of subscribers since the adoption of the ownership limitations?
- (h) To what extent has MSO investment in programming services been affected by the ownership limitations?
- (i) Have subscriber penetration levels of unaffiliated programming services changed?

⁷⁴ Appendix G of the 1990 Report is attached hereto as "Appendix A."

⁷⁵ See 8 FCC Rcd at 8583, n.64.

⁷⁶ See 8 FCC Rcd at 8583.

⁷⁷ See n.90, *infra*.

64. Finally, we propose to seek comment and information on how recent or proposed mergers or partnerships and alliances involving programming vendors, cable operators, or telephone companies will affect the cost, quality and variety of video programming. Specifically,

- (a) How will such mergers, partnerships and alliances affect competition between the cable industry and other competing distribution technologies?
- (b) How will the entry of competing distribution technologies affect the vertical relationships between cable systems and program suppliers?
- (c) In particular, how might such entry affect relationships between cable systems and program suppliers?
- (d) What regulatory and antitrust concerns, if any, are raised by such combinations?

V. Changes in Practices/Conduct of Multichannel Video Programming Vendors and Distributors Since Passage of the 1992 Cable Act

65. Because the ability of multichannel video programming distributors to compete effectively depends on their ability to offer video programming that appeals to the marketplace, all distributors need access to desirable, reasonably priced programs. Certain conduct by cable operators and vertically integrated programming vendors can have anticompetitive effects on both programming and distribution markets, since access to programming on fair, reasonable and non-discriminatory terms is essential to the entry and survival of competing distribution technologies. Moreover, programming vendors themselves may be injured when: (a) as a condition of carriage on a particular system, a programming vendor is forced to provide equity participation or exclusivity to a distributor exercising undue market power, or (b) distributors exercising undue market power attempt to interfere with the programming vendor's decision to sell programming to competing distributors.

66. In response to concerns about the effects on the distribution of programming of increased vertical integration and horizontal ownership,⁷⁸ Congress sought to include provisions in the 1992 Cable Act that would address the development of competition in the video programming marketplace. Specifically, Congress adopted Sections 12 and 19, which add new Sections 616 and 628 to the Communications Act.

67. Section 628 requires the Commission to prescribe regulations governing access to cable programming services by competing multichannel systems.⁷⁹ Section 628(b) prohibits cable operators, vertically integrated satellite cable programming vendors and all satellite broadcast program-

ming vendors from engaging in "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite [cable or broadcast] programming to subscribers or consumers."⁸⁰

68. Section 628(c) directs the Commission to prescribe regulations that, at a minimum, prohibit (a) a vertically integrated cable operator from unduly or improperly influencing the prices, terms, or conditions of the sale of programming by its affiliated programmer to unaffiliated distributors; (b) discrimination in the prices, terms, and conditions of the sale of satellite cable or broadcast programming to competing distributors; and (c) exclusive contracts except in specified circumstances.⁸¹

69. Section 616 of the Communications Act governs carriage agreements between cable systems (or other multichannel video programming distributors) and video programming vendors. These provisions are intended to prevent distributors from taking undue advantage of unaffiliated programming vendors.

70. On April 1, 1993, the Commission promulgated program access rules to implement Section 19 of the 1992 Cable Act, which allow multichannel video programming distributors to seek redress at the Commission when they are subject to undue interference, discriminatory prices, terms or conditions, or prohibited exclusionary practices.⁸²

71. Furthermore, on September 23, 1993, the Commission adopted regulations to implement Section 12 of the 1992 Cable Act.⁸³ Pursuant to these regulations, cable operators cannot take undue advantage of programming vendors by coercing them to grant ownership interests or exclusive distribution rights as a condition of carriage on their systems, and also may not retaliate against them for failing to provide exclusive carriage rights. Finally, cable operators cannot engage in conduct that unreasonably restrains the ability of programming vendors unaffiliated with the operator from competing fairly with other programming vendors.⁸⁴

72. Through this *NOI* we seek to determine whether anticompetitive practices in the multichannel video programming and distribution markets have diminished, and whether new and potentially anticompetitive conduct has developed. Following an analysis of the comments we receive, we will report our findings to Congress, and propose appropriate regulatory or legislative action where necessary to ensure that the public interest is served by preserving consumer access to a wide array of multichannel video programming from competing distributors.

73. As an initial matter, we intend to examine whether the anticompetitive conduct, as identified in the 1990 Report and in the legislative history to the 1992 Cable Act, has abated. Thus, we request comment on the extent to which the conduct within the scope of our rules continues.

⁷⁸ See, e.g., 1990 Report at 5006, 5008, and 5021.e

⁷⁹ See Communications Act, § 628; 1992 Cable Act, § 19; 47 U.S.C. § 548.

⁸⁰ See Communications Act, § 628(b); 1992 Cable Act, § 19; 47 U.S.C. § 548(b).

⁸¹ See Communications Act, § 628(c); 1992 Cable Act, § 19; 47 U.S.C. § 548(c).

⁸² *First R & O*, 8 FCC Rcd at 3416-3423; 47 C.F.R. §§ 76.1000 et seq.

⁸³ *Second Report and Order in Implementation of Sections 12*

and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, ("Second R&O"), MM Docket No. 92-265, 8 FCC Rcd 3359; (1993), recon. pending.

⁸⁴ See 47 C.F.R. § 76.1301.

Commenters are asked to support their positions with specific information or examples.⁸⁵ In addition, we seek comment on the current ability of distributors employing alternative technologies to compete with cable systems for the purchase of, or for access to, programming services. What changes have occurred with respect to the sources and supply of video programming (1) at the national level; (2) in rural areas; and (3) to cabled areas? Commenters are asked to provide specific facts or examples to support their comments and views. For example, we invite commenters to respond to the following questions:

- (a) How has the conduct of cable operators, competing multichannel video programming distributors, and vertically integrated programming vendors changed? Have such changes brought demonstrable benefits to consumers?
- (b) Can it be argued, or demonstrated, that the mere existence of the statutory provisions and our rules has already affected programming practices and conduct?
- (c) To what extent is previously unavailable programming now available to competing distribution technologies?
- (d) How, if at all, have carriage negotiations changed?

74. We also seek to determine whether anticompetitive practices that affect the distribution and availability of multichannel video programming, other than those already addressed by the rules, have developed. Accordingly, we ask that commenters describe (supported with specific examples and/or empirical evidence, when possible) specific sales or negotiating practices, other than those already addressed by the program access rules, that have occurred, or may occur, which may have an anticompetitive impact on competing multichannel video programming distributors. Specifically, we ask commenters to address the following:

- (a) Do vertically integrated MSOs currently discriminate against rival programming services in terms of prices charged to subscribers for services? In terms of channel position?
- (b) Do vertically integrated MSOs currently treat rival programming services differently from affiliated services in terms of advertising support or promotion?
- (c) Do vertically integrated MSOs currently discriminate against non-affiliated programming vendors with respect to tiering or packaging of services? With respect to signal quality?
- (d) How does the vertical relationship affect other aspects of access or carriage negotiations?
- (e) Do the practices and incentives involved in the decisions relating to carriage of programming services differ depending on whether the services in question are, at least in part, advertiser supported?

75. To the extent this inquiry may demonstrate or suggest that participants in the cable programming industry continue to engage in the anticompetitive practices identified in the statute and our rules, we invite analyses of the causes and effects of those practices. What are the relevant product and geographic markets affected by these practices? In addition, we seek comments on the relative market shares of cable operators and other distributors that serve those markets. Specifically,

- (a) Who are the actual or potential non-cable competitors for programming in each market?
- (b) What portion of each market is served by other multichannel video programming distributors? How vigorous is the competition for programming among these multichannel video programming distributors?

76. In addition to the conduct/behavior discussed above, we believe that analysis of certain other issues is relevant to an examination of the status of competition in the market for the delivery of video programming. For example, we ask commenters to identify the current factors used by distributors in making programming carriage decisions. In particular, how does subscriber demand affect cable operator carriage decisions and the carriage decisions of competing technologies? Do distributors currently measure or assess subscriber demand for particular programming services, and if so, how?

77. Finally, to the extent that commenters express continued concerns about the existence of undue market power by cable operators, other multichannel video programming distributors, or vertically integrated programming vendors engaging in conduct that is not expressly encompassed within our rules, we invite commenters to suggest regulatory responses that will address them.

VI. Collection of Data for Future Reports

78. As stated earlier, we intend to rely on the data that is submitted in response to this *NOI* for purposes of preparing our first report to Congress. For the future, however, we believe that it may be desirable to establish more systematic reporting procedures. Thus, we invite commenters to suggest specific studies, surveys, samplings, methodologies, etc. that the Commission might undertake to gather the information that will enable us to prepare accurate and comprehensive reports. Moreover, we ask commenters to suggest any specific databases that the Commission might develop and maintain to facilitate the preparation of our annual reports.

79. With respect to information related to horizontal ownership and vertical integration, comment is sought on the appropriate methods that the Commission should employ to gather the data necessary to update the charts and tables contained in Appendix G to the 1990 Report. For example, commenters are asked:

⁸⁵ It may be necessary to omit specific identities to protect the confidential nature of business relationships, although we encourage the fullest possible reporting.

(a) Should the Commission send surveys or questionnaires to particular MSOs and vertically integrated programming vendors? If so, how should the survey audience be selected?

(b) Should surveys be sent to all cable systems, or to the top 100 systems/MSOs as reported by the trade press?

(c) How often should the charts and tables contained in Appendix G to the 1990 Report be updated?

80. With respect to the information required for our evaluation of the development of competitive technologies for the delivery of multichannel video programming, we seek comment on the appropriate means of gathering such data. For example, should the Commission adopt annual reporting requirements for various multichannel video programming distributors and vertically integrated programming vendors? If so, what should those reporting requirements entail?⁸⁶ If commenters oppose our imposing such reporting obligations on *all* multichannel distributors and vertically integrated entities, we ask that they identify appropriate limits on both the amount and type of information collected as well as on whom the reporting obligations are imposed.

81. We believe that our licensing authority over the various multichannel distributors, as well as Section 19(f)(2) and Section 3(g) of the 1992 Cable Act, provides a sufficient legal basis to establish and impose any such reporting requirements with respect to both multichannel distributors and vertically integrated programming vendors.⁸⁷ We invite commenters to address this conclusion. We seek comment on ways to reduce the burdens that may be imposed on the regulated parties by such reporting requirements. In this regard, we ask commenters to address specifically what types of burdens would imposition of each proposed reporting requirement place on the affected industries and on the Commission? What are the advantages that may be gained by both regulators and consumers in gathering such information? Would the advantages outweigh the burdens?

82. How much of this information is already provided to the Commission through existing reports or applications, such as applications for assignment or transfers of control of Cable Antenna Relay Service ("CARS") licenses? Alternatively, what information is available through public sources, and what are those sources? How often are they updated?

83. Further, we ask commenters to consider the extent to which any of the information sought for our report might be similar to information already collected by the relevant parties for other purposes related to our implementation

and enforcement of the 1992 Cable Act. For example, we note that in connection with the adoption of channel occupancy limits pursuant to Section 11 of the 1992 Cable Act, Section 76.504(e) of the Commission's Rules requires cable operators to maintain various records for at least three years in their public files.⁸⁸ Such records must be available to local franchising authorities, the Commission, or members of the public on reasonable notice and during regular business hours.⁸⁹

84. Our rules do not further elaborate on the precise type, manner, form or time frame for how the required information should be maintained. We seek comment from cable operators subject to this record maintenance requirement (and from franchising authorities who are primarily responsible for monitoring cable operator compliance with the channel occupancy rules) on the records anticipated to be compiled and maintained, and whether any additional burden would exist if we require the filing of such records with the Commission. Should such records be maintained at the Commission and how often should they be updated?

85. Similarly, a number of vertically integrated MSOs already have agreed to significant annual reporting requirements with respect to program distribution in connection with their participation in the Primestar medium-power DBS service.⁹⁰ Primestar entered into a consent decree with the Department of Justice to settle antitrust litigation involving cable programming access by distributors that compete with the partner MSOs. In addition, Primestar and its partners, excluding Viacom, entered into a consent decree with the Attorneys General of forty states to settle concurrent antitrust litigation ("Primestar Decree"). Viacom entered into a separate consent decree with the forty Attorneys General ("Viacom Decree").⁹¹

86. Pursuant to the Primestar and Viacom decrees, substantial annual reporting requirements are imposed on the settling defendants. For example, each of the Primestar Partners and Viacom are required annually to provide to the forty states a verified written report of their compliance with the terms of the respective decrees. The report must include for each reporting entity, where applicable, the following:

- a. a list of all programming services in which the entity has an interest and the extent of any such interest as of the date of the report;
- b. a list of all national programming services with which the entity has entered into company-wide distribution agreements during the year in which the report is filed;

⁸⁶ The Commission has previously indicated its intention to initiate a rulemaking proceeding proposing that competitors to cable television be required to file with the Commission annual registration statements providing data with respect to reach and penetration. See *Rate Order*, 8 FCC Rcd 5670 n.145 (1993). Similarly, relevant information from programming vendors could include aggregate totals of programming sold to the various types of multichannel video programming distributors, and the numbers of subscribers (where available) receiving the programming from each type of distributor.

⁸⁷ See e.g., 47 U.S.C. § 548(f)(2), and 47 U.S.C. § 543(g). We note that the Commission has not yet specified the appropriate reporting requirements that will be required of cable operators

to comply with Section 3(g). See *Notice of Proposed Rulemaking in Implementation of Sections of the Cable Television, Consumer Protection and Competition Act of 1992: Rate Regulation*, MM Docket No. 93-215, 58 F.R. 40762 (July 30, 1993).

⁸⁸ See 47 C.F.R. § 76.504(e).

⁸⁹ *Id.*

⁹⁰ See III(B)(1), *supra*. The seven cable MSO partners who originally invested in Primestar were Comcast Corporation, Continental Cablevision, Inc., Cox Enterprises, Inc., Newhouse Broadcasting Corporation, Tele-Communications, Inc., Time Warner, Inc., and Viacom, Inc. (the "Primestar Partners").

⁹¹ *State of New York ex rel Abrams v. Primestar Partners, L.P.*, 1993-2 Trade Cases ¶¶ 70,403, 70,404 (S.D.N.Y. 1993).

c. a list of all programming services for which the entity has exclusive distribution rights, in whole or in part, as of the date of the report; and

d. a list of all programming and cable assets subject to the decrees sold or otherwise transferred during the year with respect to which the report is filed, setting forth the identity of the purchaser or transferor and the percent of the cable system and/or programming assets of the ultimate parent of the entity that were sold or otherwise transferred.⁹²

87. The decrees further provide, however, that any information provided to the states under the terms of the decrees shall be kept confidential, and may only be used in judicial proceedings to enforce the decrees by the states upon five days' notice to the relevant party, who may seek a protective order from the court to prevent the information from being used in open court.⁹³ Thus, it does not appear that the Commission will have access to any of the information that the Primestar Partners and Viacom have agreed to provide annually to the forty states. Nevertheless, it may be useful for the Commission itself to gather this or similar information, not only from these entities, but from all vertically integrated entities governed by the program access and carriage agreement provisions. Commenters are requested to respond to this suggestion.

88. Reliance on information gleaned through the Commission's formal program access complaint process alone may not yield a complete picture of potential and actual anticompetitive actions or behavior relating to program access. Therefore, for purposes of supplementing our annual reporting to Congress, and determining the adequacy of our enforcement procedures, we invite commenters to suggest mechanisms for our receipt of such evidence of marketplace behavior. Specifically:

(a) Could some type of anonymous reporting procedure be developed, or would it be too susceptible to abuse?

(b) What information should the Commission request, and how should the Commission follow up on anonymous allegations, to facilitate development of an informed opinion regarding the allegedly anticompetitive practice(s)?

89. Finally, the Commission is sensitive to the fact that some information that could be requested may include proprietary or otherwise confidential information or data.⁹⁴ We request that commenters specifically address such concerns and provide suggestions as to how the Commission should gather, examine, protect or release such information/data. Where confidential information must be collected, we seek comment on methods for protecting individual confidentiality.

VII. PROCEDURAL MATTERS

90. This *NOI* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 29, 1994, and reply comments on or before July 29, 1994. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus ten copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

91. For purposes of this proceeding, because of its relationship to other pending and proposed rule making proceedings, the non-restricted notice and comment *ex parte* rules will be applied. Under these rules, *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally*, 47 C.F.R. Section 1.1206(a). The Sunshine Agenda Period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission: (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first, 47 C.F.R. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for clarification or adduction of evidence or the resolution of issues in the proceeding, 47 C.F.R. Section 1.1203. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present, 47 C.F.R. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted, a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously filed written comments, memoranda, or filings in the proceeding must provide on the day of oral presentation, a memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the

⁹² See Section VIII-B of both the Primestar Consent Decree and the Viacom Consent Decree, 1993-2 Trade Cases ¶¶ 70,403, 70,404.

⁹³ See Section XI of both Viacom and Primestar Decrees, 1993-2 Trade Cases ¶¶ 70,403, 70,404.

⁹⁴ See 47 C.F.R. § 0.459.

Secretary has been served, and must also state by docket number the proceeding to which it relates. 47 C.F.R. Section 1.1206.

92. Further information on this proceeding may be obtained by contacting Nina M. Sandman or Diane Hofbauer at (202) 416-0856 in the Competition Division of the Cable Services Bureau.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX G

HORIZONTAL CONCENTRATION, VERTICAL INTEGRATION AND PROGRAM ACCESS

TABLE I

CURRENT CONCENTRATION OF CONTROL OF THE CABLE TELEVISION INDUSTRY 1/

<u>Rank</u>	<u>Company</u>	<u>Share of Top 50 <u>2/</u></u>	<u>Share of Total Industry <u>3/</u></u>
1	TCI	24.73%	22.16%
2	Time Warner	12.92	11.58
3	Comcast Cable	9.25	8.29
4	Continental Cablevision	5.39	4.83
Top 4		52.29	46.86
5	Cox Cable	3.38	3.03
6	Cablevision Systems	3.17	2.84
7	Jones Intercable*	3.06	2.74
8	NewChannels	2.53	2.27
Top 8		64.43	57.74
9	Times Mirror*	2.35%	2.10%
10	Cablevision Industries*	2.17	1.95
Top 10*		68.95	61.79
Top 25*		88.80	79.58
Top 50*		100.00	89.60

HHI assuming the top 50 companies represent the whole industry = 975**

Gini Index for top 50 companies = 0.64**

1/ As part of this Inquiry, the Commission requested certain updated information, including subscriber counts, from the top nine MSO's. This table was generated using that information, other comments filed in the Inquiry, and the top 50 MSO list from Broadcasting, December 11, 1989, page 42. The analysis has been adjusted to reflect the ATC/Time Warner merger.

2/ Total number of subscribers for the top 50 MSOs is 47,705,561. Information on the top 50 MSOs is used to determine the HHI.

3/ According to Broadcasting, March 26, 1990, at 16, the total number of cable subscribers is 53,238,000. Data prepared by Broadcasting and industry sources.

* Updated subscriber counts for these MSOs were unavailable and therefore estimated. To obtain the 1990 subscriber counts, the 1989 subscriber counts for these MSOs were adjusted upward by a factor of 1.046, which represented the overall growth factor in cable subscribership (53,238,000 divided by 50,897,080 = 1.046). The 1989 subscriber count was obtained from Broadcasting, December 11, 1989, at 42. This adjustment compensates for the continuing growth of the cable industry as a whole and prevents us from overrepresenting the top MSOs' share of the industry.

** If data were available for the entire industry, the indices would be lower. A lower value indicates less concentration. Therefore, the analysis based on only 50 companies maximizes the estimate of industry concentration.

TABLE II

**CHANGES IN CONCENTRATION OF CONTROL OF THE CABLE INDUSTRY
WITHIN THE TOP 50 COMPANIES 1/**

	<u>1972</u>	<u>1975</u>	<u>1979</u>	<u>1982</u>	<u>1984</u>	<u>1985</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Top Co. Share	15.0	15.3	11.6	11.1	10.7	12.4	24.8	25.8	24.7
Top 4 Share	35.9	37.3	34.3	37.3	33.6	34.3	45.5	50.4	52.3
Top 8 Share	53.4	54.0	52.1	54.6	51.8	50.6	58.4	63.0	64.4
Top 10 Share	59.6	59.3	58.0	60.3	58.0	56.8	63.7	67.7	69.0
Top 25 Share	83.2	82.7	83.0	83.8	82.4	82.9	85.5	88.4	88.8
HHI	524	533	468	507	457	464	868	1000	975
Gini Index	.52	.52	.49	.53	.50	.51	.59	.63	.64

TABLE III

**CHANGES IN CONCENTRATION OF CONTROL OF THE CABLE INDUSTRY
BASED ON TOTAL SUBSCRIBERS 1/**

	<u>1972</u>	<u>1975</u>	<u>1979</u>	<u>1982</u>	<u>1984</u>	<u>1985</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
Top Co. Share	9.9	10.4	8.4	8.7	9.2	9.0	20.9	22.2	22.2
Top 4 Share	23.9	25.2	24.9	29.3	28.7	24.9	38.4	43.4	46.9
Top 8 Share	35.4	36.5	37.8	42.8	44.2	36.8	49.3	54.2	57.7
Top 10 Share	39.6	40.1	42.1	47.4	49.5	41.3	53.8	58.3	61.8
Top 25 Share	55.2	56.0	60.3	65.8	70.2	60.7	73.1	76.1	79.6
Top 50 Share	66.4	67.8	72.7	78.5	85.2	72.3	84.5	86.2	89.6

1/ Data for 1990 from Table I above. Data for 1989 calculated from information appearing in Broadcasting, December 11, 1989, at 42. Data for 1988 and 1985 calculated from information appearing in Broadcasting, May 2, 1988, at 36, and December 2, 1985, at 37, respectively. Data for 1984 calculated from information in Television & Cable Factbook Volume 52 at 1726 and Volume 53 at 1385 and Television Digest 1985, Cable and Station Coverage Atlas, at 4. Other data taken from 1982 Report and Order in Docket No. 18891, 91 FCC 2d 46 (1982), Appendix A.

Table IV

**NATIONAL CABLE PROGRAMMING NETWORKS
WITH CABLE OPERATOR OWNERSHIP/EQUITY ^{1/}**

<u>Service</u>	<u>Began</u>
AMC (American Movie Classics)	10/84
BET (Black Entertainment Television)	1/80
Bravo	2/80
CBN Family Channel	5/77
CNBC (Consumer News and Business Channel)	4/89
CNN (Cable News Network)	6/80
C-SPAN I	3/79
C-SPAN II	6/86
Cable Value Network	5/86
Cinemax	8/80
The Discovery Channel	6/85
The Fashion Channel (TFC)	10/87
HBO	12/75
Headline News	1/82
Lifetime	2/84
Mind Extension University	11/87
MTV	8/81
The Movie Channel	12/79
Movietime	7/87
Nickelodeon	4/79
NICK at Nite	7/85
The Nostalgia Channel	2/85
QVC Network	11/86
Request Television	11/85
Request Television 2	7/88
Shop Television Network	10/87
Showtime	7/76
SportsChannel America	1/89
SuperStation TBS	12/76
TNT (Turner Network Television)	10/88
The Travel Channel	2/87
VH-1	1/85
Viewers Choice 1	11/85
Viewers Choice 2	6/86
VISN (Vision Interfaith Satellite Network)	9/88

^{1/} This table was derived from Benjamin Klein, "The Competitive Consequences of Vertical Integration in the Cable Industry," (Klein study) June 1989, which was submitted as part of NCTA's comments. The Klein study was compiled based on information obtained in 1988 and 1989. Klein's table was edited to reflect certain ownership changes since that time.

Table V

**NATIONAL CABLE PROGRAMMING SERVICES
WITH NO CABLE OPERATOR OWNERSHIP INTEREST 1/**

<u>Service</u>	<u>Began</u>
A&E Cable Network (Arts & Entertainment)	2/84
ASTS Satellite Network Television	5/84
Alternate View Network	10/85
American's Value Network	3/87
Cable Video Store	1/85
Country Music Television	3/83
The Disney Channel	4/83
ESPN (Entertainment & Sports Prog. Network)	9/79
EWTN (Eternal Word Television Network)	8/81
Family Guide Network	6/86
Family Net (formerly Liberty Broadcasting)	6/80
Financial News Network (FNN)	11/81
FNN/SCORE	4/85
FNN/TelShop	8/86
Galavision/ECO	10/79
Hit Video USA	12/85
Home Shopping Network I	7/85
The Inspirational Network	4/78
International Television Network	1/88
KTLA	3/88
KTVT	7/84
The Learning Channel (TLC)	10/80
TNN (The Nashville Network)	3/83
National Jewish Television	5/81
The Playboy Channel	11/82
The Silent Network	2/84
TBN (Trinity Broadcasting Network)	4/78
Univision (formerly SIN Television Network)	9/76
USA Network	9/80
The Weather Channel	5/82
WGN	11/78
WPIX	5/84
WSBK	2/88
WWOR	4/79
Zap Movies (formerly Telstar)	11/86

1/ This table was derived from the Klein study. The Klein study was compiled based on information obtained in 1988 and 1989. Klein's table was edited to reflect certain ownership changes since that time.

Table VI

Major MSO Cable Network Ownership 1/
 (as of 12/31/89) 2/
 (figures are percentages of attributable ownership
 rounded to tenths of a percent)

Cable Program Service	TCI	Viacom	<Time Warner> ATC Warner	Conti- nental	Cox	Com- cast	Cable- Vision	New Chan.*
Am. Movie Clcs.	50.0	-	-	-	-	-	50.0	-
BET TV, Inc.	14.3	-	<14.3a/>	-	-	-	-	-
Discovery Ch.	49.2b/	-	-	-	24.6	-	-	24.8
Fashion Ch.	36.6b/	-	-	-	-	-	-	-
Int'l Ca. Tech.	11.7	-	-	-	-	-	-	-
Movietime Ch.	10.5	-	11.0	44.0	11.0	11.4	-	11.3
Netlink USA	80.0	-	-	-	-	-	-	-
PA Educ. Comm.	11.7	-	-	-	-	-	-	-
Prevue Guide	20.0	-	-	-	-	-	-	-
Prime Time Inc.	35.0	-	-	-	12.5	-	-	12.5
QVC Network	22.7b/	-	9.3	25.7	e/	13.0c/	-	-
So. Sat. Sys.	100.0	-	-	-	-	-	-	-
Think Ent.	37.5	-	-	-	-	-	-	-
Turner B/C Sys.	14.5b/	e/	-	18.1	e/	-	-	-
XPress Info.	100.0	-	-	-	-	-	-	-
KBL Ent.	100.0	-	-	-	-	-	-	-
TCI N.W. CATV	100.0	-	-	-	-	-	-	-
Affil. Reg. Com.	60.0	-	-	-	-	-	-	-
Raycom Partners	50.0	-	-	-	-	-	-	-
Sunshine Net.	56.1	-	9.6	-	18.0	6.6c/	-	-
Showtime	d/	100.0	-	-	-	-	-	-
The Movie Ch.	-	100.0	-	-	-	-	-	-
MTV	-	100.0	-	-	-	-	-	-
Nickelodeon	-	100.0	-	-	-	-	-	-
VH-1	-	100.0	-	-	-	-	-	-
Lifetime	-	33.0	-	-	-	-	-	-
HA! Comedy Net.	-	100.0	-	-	-	-	-	-
Pacific Spts.	50.0	50.0	-	-	-	-	-	-
Prime Spts. NW	60.0	40.0	-	-	-	-	-	-
Pay-P/View Net.	-	11.0	16.7	-	12.0	12.5	11.1c/	11.1
Info Channel	-	-	-	-	-	-	-	5.7
HBO	-	-	<100.0a/>	-	-	-	-	-
Cinemax	-	-	<100.0a/>	-	-	-	-	-
Video Jukebox	-	-	-	-	-	-	-	16.7
Z - Ch.	-	-	-	-	33.0	-	-	-

1/ These data are culled from responses to letters sent to these individual companies requesting data with respect to their vertical interests. The letters were sent by the Chief, Mass Media Bureau on December 29, 1989.

Cable Program Service	TCI	Viacom	<Time Warner> ATC	Warner	Conti- nental	Cox	Com- cast	Cable- Vision	New Chan.*
Amer. Shop Ch.	-	-	-	-	-	30.0	-	-	-
Spotlight	-	-	-	-	-	20.0	-	-	-
Bravo	-	-	-	-	-	-	-	50.0	-
CNBC	-	-	-	-	-	-	-	50.0	-
News 12 Long I.	-	-	-	-	-	-	-	49.5	-
PRISM	-	-	-	-	-	-	-	50.0	-
SprtsCh. Amer.	-	-	-	-	-	-	-	50.0	-
SprtsCh. Chi.	-	-	-	-	-	-	-	50.0	-
SprtsCh. Fla.	-	-	-	-	-	-	-	50.0	-
SprtsCh. L.A.	-	-	-	-	-	-	-	50.0	-
SprtsCh. N.E.	-	-	-	-	-	-	-	50.0	-
SprtsCh. N.Y.	-	-	-	-	-	-	-	50.0	-
SprtsCh. Ohio	-	-	-	-	-	-	-	50.0	-

* Includes NewChannels affiliated companies Metrovision, Inc. and Vision Cable Communications, Inc.

- a/ Time Warner controls the indicated percent of this cable program service. Time Warner owns 82% of ATC and 100% of Warner Cable.
- b/ This is the ownership figure for this cable program service as indicated in the acquisition section of TCI's letter. TCI holds a higher percentage than indicated of warrants or class B and C stocks for this cable service.
- c/ Comcast supplied these percentage figures in a follow-up letter dated 2/15/90. Comcast has a beneficial ownership in the QVC Network of 28.1%.
- d/ TCI has a 50% purchase of Showtime pending.
- e/ This company has less than 5% interest in these cable networks.
- 2/ TCI has recently purchased a financial interest in the Family Channel. TCI has also announced its intention to spin off its programming interests. See letter dated January 31, 1990, to Roy J. Stewart, Chief, Mass Media Bureau from John M. Draper, Vice President and General Counsel of TCI.

Table VII

**VERTICAL CONNECTION BETWEEN MAJOR CABLE
PROGRAMMING NETWORKS AND CABLE SYSTEM OPERATORS ^{1/}**

<u>Programming Network (top 25)</u>	<u>Subscribers (millions)</u>	<u>MSOs with Ownership/Equity Interest in Network</u>	<u>Date Began</u>
ESPN	55.9	None	9/79
CNN	54.4	TCI(21.8%), Time-Warner(18.1%), Viacom(<5%), <u>et al.</u>	6/80
SuperStation TBS	54.0	TCI(21.8%), Time-Warner(18.1%), Viacom(<5%), <u>et al.</u>	12/76
USA Network	51.5	None	4/80
Nickelodeon/NICK at Nite	50.8	Viacom (100%)	4/79, 7/85
MTV	50.4	Viacom (100%)	8/81
The Nashville Network	50.0	None	3/83
C-SPAN	49.7	<u>2/</u>	3/79
The Discovery Channel	49.7	TCI(49.2%), Newhouse(24.8), Cox (24.6)	6/85
The Family Channel	49.1	TCI(17%)	4/77
Lifetime	47.0	Viacom(33%), Hearst(33%)	2/84
TNT	44.5	TCI(21.8%), Time-Warner(18.1%), Viacom(<5%), <u>et al.</u>	10/88
A&E Cable Network	44.0	None	2/84
The Weather Channel	43.0	None	5/82
Headline News	41.8	TCI(21.8%), Time-Warner(18.1%), Viacom(<5%), <u>et al.</u>	1/82
Video Hits-One	34.6	Viacom (100%)	1/85
QVC Network	33.9	TCI(22.7%), Time-Warner(25.7%), Comcast (est.16%)	11/86
Financial News Network	33.8	None	11/81
WGN	30.0	None	11/78
BET	27.0	TCI(14.3%), Time-Warner (through HBO 14.3%)	1/80
American Movie Classics	26.0	TCI(50.0%), Cablevision(50.0%)	10/84
FNN/Sports	22.3	None	4/85
C-Span II	20.7	<u>2/</u>	6/86
The Learning Channel	20.0	None	10/80
Home Shopping Network I	19.9	None	7/85

- ^{1/} This table was derived from Cable Television Developments, NCTA Research & Policy Analysis Department, May 1990; data compiled from responses to FCC questions to cable operators and services; Tables IV, V, and VI.
- ^{2/} Cable affiliates provide 95 percent of the funding for C-SPAN, but have no ownership or program control interests.

Table VIII

**VERTICAL INTEGRATION: TOP FIFTEEN MAJOR CABLE
PROGRAMMING NETWORKS (BY RATING) 1/**

<u>Rank</u>	<u>Service</u>	<u>Date Began</u>	<u>MSOs with Ownership/Equity</u>
1	TBS	12/76	TCI(21.8%), Time-Warner(18.1%) Viacom(<5%), <u>et al.</u>
2	USA	9/80	none
3	ESPN	9/79	none
4	CNN	6/80	TCI(21.8%), Time-Warner(18.1%) Viacom(<5%), <u>et al.</u>
5	TNT	10/88	TCI(21.8%), Time-Warner(18.1%) Viacom(<5%), <u>et al.</u>
6	TNN	3/83	none
7	Discovery Channel	6/85	TCI(49.2%), Cox(24.6%), Newhouse(24.8%)
8	NICK at Nite	7/85	Viacom (100%)
9	Lifetime	2/84	Viacom(33%), Hearst(33%)
10	Family Channel	5/77	TCI (17%)
11	A&E	2/84	none
12	MTV	8/81	Viacom (100%)
13	Headline News	1/82	TCI(21.8%), Time-Warner(18.1%) Viacom(<5%), <u>et al.</u>
14	BET	1/80	TCI(14.3%), Time-Warner(14.3% through HBO)
15	Weather Channel	5/82	none

1/ This Table was derived from Nielsen's First Quarter CNAD Report, as presented in Broadcasting, June 18, 1990, at 52; data compiled from responses to FCC questions to cable operators and services; Tables IV, V, and VI.

Table IX

Access to Program Networks by Competitive Media

(Y = able to obtain; N = unable to obtain)

	(HSD)	(<-----MDS 1/----->)	SMATV
	NRTC	a/ CableMax	Peo.Ch. Cleve.Wire. Tele/PR WCTV MAGNAVISION NPCA
HBO	Y	N <u>f/</u>	N
Cine	Y	N <u>f/</u>	N
Show	N <u>b/</u>	N <u>f/</u>	N <u>k/</u>
TMC	N <u>b/</u>	N <u>f/</u>	N
AMC	Y <u>c/</u>	-	N <u>g/</u> No resp
MTV	N <u>d/</u>	-	-
VH1	N <u>d/</u>	-	-
Dis *	Y	-	N
FNN *	N <u>d/</u>	-	-
NICK	Y	-	-
TNT	N <u>d/</u>	N <u>f/</u>	N
TNN *	Y	-	-
CNBC	No resp	-	-
CNN	Y	-	-
A&E *	-	-	No resp
ESPN *	<u>e/</u>	-	Y <u>h/</u>
SPTS CH	-	-	N
HSPTS	-	-	N
USA *	-	-	-
MovT	-	-	-
Life	-	-	-

* Program network is not vertically integrated with an MSO.

a/ NRTC states that it must pay, on average, 460% more for programming than small cable companies (i.e. \$10 vs. \$2.25 for an 18 channel package).

b/ NRTC states that it has made an offer to Viacom for the service. NRTC has yet to receive a response.

c/ A written proposal from AMC is currently under review.

d/ NRTC has been unable to obtain this service after reasonable and repeated requests. NRTC does not define reasonable or repeated.

e/ NRTC states that ESPN offered a contract to provide service in "restricted" territories. ESPN, in its comments, defends exclusivity as a valuable and time-tested component of the television business. ESPN states that it does not generally grant exclusive distribution rights.

f/ CableMaxx has yet to secure access to this service despite its offers to post letters of credit equal to several months billing.

g/ Cablevision Systems Corp., in reply comments, states that it supplies its programming to several wireless cable operators including Peo. Ch.

h/ People's Choice is not authorized to distribute ESPN through wireless cable. People's Choice is limited to distributing ESPN only via its SMATV facilities. See footnote e.

i/ Telecable of Puerto Rico had provided its subscribers with USA Network for several months. However, USA cancelled the agreement, claiming that USA had a policy of not selling to wireless and had mistakenly believed that Telecable was a hard wired system. In their March 28, 1990, letter response to follow up questions from the Los Angeles field hearing, USA

states that it distributes its programming to MMDS systems'.

- 1/ The WCA claims that ESPN has refused to enter into an agreement with WCTV, the wireless cable operator in Tampa Bay, justifying its actions on the grounds that WCTV's operations manager was formerly employed by a wholly unrelated wireless company that sued ESPN after ESPN unilaterally stopped providing service. ESPN, in its reply comments, states that the WCA has misstated the facts regarding ESPN's relationship with WCTV. ESPN claims that it was forced to and successfully sued Skyview, Inc. of Belleville, WI, after its president (a current WCTV minority owner and operations manager) intentionally obtained unauthorized access to the ESPN service through the use of a consumer Videocipher II decoder for use on his MMDS system from 7/1/88 to 6/24/89. The "suit" referenced by WCA relates to Skyview's counterclaims alleging violations of the Wisconsin Fair Dealership Law and antitrust law. The counterclaims were dismissed at summary judgment and an order and damage award was thereafter entered against Skyview for its illegal activity. ESPN states that, under such circumstances, it is hesitant to enter into an agreement with WCTV.
- k/ Magnavision stated that in 1986, Showtime's policy was not to issue licenses to MMDS. In 1988, Showtime refused sale again stating that MMDS technology is "too new and largely untested." In 1989, Showtime stated that it was testing wireless cable carriage by selling to Microband and that, in any event, Magnavision would have to provide Showtime a substantial amount of information about Magnavision before Showtime would consider a service order.
- l/ Disney wanted assurances of protection against signal piracy along with price and growth projections.
- m/ TNT refused service in 1989, saying that TNT might be available in the future.
- n/ A&E informed Magnavision that its policy is not to serve MMDS. It will only deal with cable systems.
- o/ ESPN refused to sell to Magnavision on the basis that it would license its programming to MMDS only when MMDS operators can "present unique test cases or (markets) to us." See footnote e.
- p/ General "red-lining" to zip codes where cable exists.
- q/ Refused to sell in 1988 because of its stated fear that MMDS has signal security problems.
- r/ Movietime declined to sell and stated that it is currently reviewing its sales policy and its guidelines for affiliation.
- s/ Must purchase (at a substantial markup) from cable operator in the same area.
- t/ Refused to sell at all to the private cable industry. However, commenter states that service might become available. Cablevision states that it does sell its programming to the private cable industry.
- u/ SMATV pays for MTV, NICK, and VH1 on a per subscriber basis, whereas cable operators receive discounts for a combined purchase of all three services.
- v/ USA requires SMATV to pay per home passed, whereas cable pays per subscriber.

1/ The information about Magnavision was obtained from the comments it submitted. The information about the other MMDS systems was obtained from the comments submitted by the Wireless Cable Association (WCA), a trade association of MMDS operators.

Table X

Wireless Cable Systems' Access to Specific Program Networks 1/

Wireless Systems:	<-----Cable Program Network----->					
	HBO	ESPN	Showtime	TNT	Sports Channel	Regional Sports Channel
Carry Unrestricted	5	11	6	1	4	5
Carry Restricted	1	6	0	0	1	0
Request Pending	1	1	0	0	1	0
Unavailable	25	14	26	31	26	27
Total Systems Surveyed	32	32	32	32	32	32

Note: The wireless cable system carrying TNT, PacWest in Sacramento, was recently notified that service would be terminated.

Table XI

Sample Rate Comparisons Between Wireless Cable and Cable 1/
(cents per subscriber)

	Top Wireless Rate	Top Cable Rate	Wireless Premium
CNN	\$.50	\$.28	78.6%
USA	.38	.23	65.2%
Nickelodeon	.35	.22	59.1%
MTV	.35	.22	59.1%
Nashville	.35	.20	75.0%
A&E	.15	.11	36.4%
Headline News	.50	.00	-

1/ Information obtained in the comments of the Wireless Cable Association.

Table XII

Rate Comparisons: Mid-Atlantic Communications' Cable Systems vs. SMATVs 1/

Programmer	SMATV	Cable System	SMATV Premium
HBO *	\$6.25 per sub **	\$4.00/mo. per sub <u>a/</u>	56.2%
Cinemax *	6.50 per sub **	3.86/mo. per sub	94.5%
Nick *	0.29 per sub	0.17 per sub	70.5%
MTV *	0.29 per sub	0.17 per sub	70.5%
USA	0.18 per passing	0.18 per sub	not comparable
FNN	0.17 per sub	0.055 per sub	209%
HTS	1.50 per sub	0.75 per sub	100%
CNN *	0.33 per sub	0.25 per sub	32.0%
ESPN *	0.47 per sub	0.32 per sub	46.9%

1/ Information obtained from the comments of the National Satellite Programming Network, Inc., et al.

a/ Sub = subscriber

* Cable network has vertical relationship with a cable MSO.

** Sold by cable operator

Table XIII

MSO CARRIAGE OF OWNED NETWORKS ^{1/}

<u>Network</u>	<u>MSO with Ownership Ints. in Network</u>	<u>Carriage Percentage By Systems with Network Ownership Interest</u>	<u>Carriage Percentage By Systems without Network Ownership Interest</u>	<u>Difference in Carriage Percentage</u>
BET	TCI, Time Warner	53.6%	41.8%	11.8%
CNN	(a)	99.5	99.4	0.1
CVN	(b)	78.4	25.0	53.4
DSCV	(c)	88.1	85.1	3.0
HLN	(a)	80.9	73.3	7.6
LIF	Viacom, Hearst	90.0	90.0	0.0
MTV	Viacom	90.0	96.4	-6.4
NAN	Viacom	100.0	91.5	8.5
NICK	Viacom	100.0	100.0	0.0
VH1	Viacom	80.0	70.5	9.5
WTBS	(a)	93.6	92.2	1.4
Average of Basic Networks		86.7%	78.7%	8.1%
AMC*	Cablevision Systems, TCI, United Cable	62.7	29.2	33.6
BRVO*	Cablevision Systems	100.0	17.2	82.8
CMAX	Time Warner	96.2	79.7	16.5
HBO	Time Warner	100.0	99.7	0.3
SHOW	Viacom	90.0	83.8	6.2
TMC	Viacom	90.0	58.7	31.3
Average of Premium Networks		89.8%	61.4%	28.4%
Average of All Networks		87.8%	72.6%	15.3%

^{1/} This table was derived from the Klein study. The Klein study was compiled based on information obtained in 1988 and 1989. Klein's table was edited to reflect certain ownership changes since that time.

- (a) TCI, Time Warner, United Artists, United Cable, Heritage, TCI-Taft, Cablevision Systems, Continental, Jones Intercable, Lenfest, Sammons, Storer, Times Mirror, TKR Cable, Viacom, Telecable, Centel, Scripps Howard (Telescripps).
- (b) TCI, Time Warner, Cablevision Systems, Colony, Continental, Newhouse, Rogers Communications, Sammons, Times Mirror, Viacom, Daniels & Associates, Cooke Cablevision, American Cablevision, Adam Corporation, United Artists, Heritage.
- (c) TCI, Cox, Newhouse, United Cable.

* Hybrid services (offered both as basic and premium).

Table XIV

**CARRIAGE BY VERTICALLY INTEGRATED MSOs OF NETWORKS IN WHICH
THEY HAVE NO OWNERSHIP INTERESTS ^{1/}**

<u>Network</u>	<u>Vert. Integrated MSO's w/no Ownership Ints. in the Particular Network</u>	<u>Carriage Percentage By Vertically Integrated MSO's w/no Ownership Interests in the Network</u>	<u>Carriage Percentage By Systems with No Ownership Interests in Any Networks (153 Systems)</u>	<u>Difference in Carriage Percentage</u>
AEN	TCI, T/W, Viacom, CVS	87.9%	81.7%	6.2%
BET	Viacom, CVS	50.0	31.4	18.6
CSPN*	TCI, T/W, Viacom, CVS	94.8	71.2	23.6
DSCV	T/W, Viacom, CVS	85.8	85.0	0.0
ESPN	TCI, T/W, Viacom, CVS	100.0	100.0	0.0
FNN	TCI, T/W, Viacom, CVS	74.1	63.4	10.7
LIF	TCI, T/W, CVS	96.2	79.1	17.1
MTV	TCI, T/W, CVS	98.1	93.5	4.6
NAN	TCI, T/W, CVS	87.0	94.4	-7.4
NICK	TCI, T/W, CVS	100.0	100.0	0.0
TNN	TCI, T/W, Viacom, CVS	89.7	93.5	-3.8
TWC	TCI, T/W, Viacom, CVS	82.8	72.5	10.2
USAN	TCI, T/W, Viacom, CVS	99.1	96.7	2.4
VH1	TCI, T/W, CVS	62.3	69.3	-7.0
WGN	TCI, T/W, Viacom, CVS	54.3	54.2	0.1
Average of Basic Networks		84.5%	79.7%	5.1%
AMC**	T/W, Viacom	47.2	21.6	25.7
BRVO**	TCI, T/W, Viacom	17.9	13.1	4.8
CMAX	TCI, Viacom, CVS	77.8	76.5	1.3
DSNY	TCI, T/W, Viacom, CVS	97.4	92.8	4.6
GALA**	TCI, T/W, Viacom, CVS	9.5	3.3	6.2
HBO	TCI, Viacom, CVS	100.0	99.3	0.7
SHOW	TCI, T/W, CVS	84.0	75.8	8.1
TMS	TCI, T/W, CVS	50.0	56.2	-6.2
Average of Premium Networks		60.5%	54.8%	5.6%
Average of All Networks		76.5%	71.4%	5.2%

^{1/} This table was derived from the Klein study. The Klein study was compiled based on information obtained in 1988 and 1989. Klein's table was edited to reflect certain ownership changes since that time.

* Cable affiliates provide 95 percent of the funding for C-SPAN, but have no ownership or program control interests.

** Hybrid services (offered both as basic and premium).

Table IV
History of Major MSO Cable Network Ownership Since 1975

(table generated from responses of the MSO's listed below that were sent letters requesting information regarding their cable programming interests)

<u>Year</u>	<u>TCI</u>	<u>Viacom</u>	<u><Time Warner-></u> <u>ATC Warner</u>	<u>Conti-</u> <u>ental</u>	<u>Cox</u>	<u>Com-</u> <u>cast</u>	<u>Cable-</u> <u>Vision</u>	<u>New</u> <u>Chan.</u>
1975	-	-	-	<u>a/</u>	-	-	-	-
1976	-	<u>b/</u>	-	-	-	-	-	-
1977	-	-	-	<u>c/</u>	-	-	-	-
1978	-	-	<u>d/</u>	-	-	-	-	-
1979	<u>e/</u>	<u>f/</u>	-	<u>g/</u>	-	-	-	-
1980	-	-	<u>h/</u>	<u>i/</u>	-	-	-	-
1981	-	-	<u>j/</u>	<u>k/</u>	-	<u>l/</u>	-	-
1982	<u>m/</u>	<u>n/</u>	-	-	-	-	<u>o/</u>	-
1983	-	<u>p/</u>	-	<u>q/</u>	-	-	<u>r/</u>	-
1984	<u>s/</u>	<u>t/</u>	-	<u>u/</u>	-	<u>v/</u>	<u>w/</u>	-
1985	-	<u>x/</u>	<u>y/</u>	<u>z/</u>	-	-	<u>aa/</u>	-
1986	<u>bb/</u>	<u>cc/</u>	<u>dd/</u>	<u>ee/</u>	-	<u>ff/</u>	<u>gg/</u>	<u>hh/</u>
1987	<u>ii/</u>	-	<u>jj/</u>	<u>kk/</u>	<u>ll/</u>	<u>mm/</u>	<u>nn/</u>	<u>oo/</u>
1988	<u>qq/</u>	<u>rr/</u>	<u>ss/</u>	<u>tt/</u>	<u>uu/</u>	<u>vv/</u>	<u>ww/</u>	<u>xx/</u>
1989	<u>zz/</u>	<u>aaa/</u>	<u>bbb/</u>	<u>ccc/</u>	<u>ddd/</u>	<u>eee/</u>	<u>fff/</u>	<u>ggg/</u>

Footnotes

1975

a/ Warner created the Movie Channel, originally known as the Star Channel.

1976

b/ Showtime Entertainment formed as a wholly-owned subsidiary of Viacom International Inc.

1977

c/ Pinwheel was launched by Warner as a young people's (ages 2-15) entertainment service.

1978

d/ Time Warner has wholly owned HBO during the entire period. HBO created Take 2 in December 1978 until it closed operations September 1980.

1979

e/ TCI became founding investor in Black Entertainment Television, Inc.

f/ In January, 1979, Showtime Entertainment became a partnership of Viacom International and Teleprompter, with each company owning 50%.

g/ Pinwheel was relaunched by Warner as Nickelodeon.

1980

- h/ Time Warner-owned HBO created Cinemax in August 1980.
- i/ Warner Amex Satellite Entertainment Company ("WASEC") was formed to market and distribute programming interests owned jointly by Warner and American Express Company ("AMEX").

1981

- j/ Time Warner acquired 1/3 interest in USA network.
- k/ MTV was launched in August by a partnership of subsidiaries of Warner and American Express as a rock music video service.
- l/ Cox acquired 20% of Spotlight December 1981.

1982

- m/ TCI acquired 11.7% of the Pennsylvania Educational Communications Systems.
- n/ In November, Viacom acquired from the subsidiary of Group W its 50% partnership interest in Showtime Entertainment. Also, Viacom and two individuals (Mr. Jeffery Reiss and Dr. Art Ulene) formed Cable Health Network, Inc. Viacom was a minority stock-holder but assumed a significant management and financial role in the venture and had rights to increase its ownership. In June, the Cable Health Network was launched, producing programming related to health and life-style issues.
- o/ Cablevision's programming arm (Rainbow Program Enterprises (RPE)) and Playboy Enterprises create a joint venture to own and operate Escapade (later renamed the Playboy Channel).

1983

- p/ In November, Cable Health Network, Inc., owned in part by Viacom, became a one-third general partner with a one-third management interest in a partnership with Hearst/ABC Services (itself a partnership of subsidiaries of the Hearst Corporation and American Broadcasting Companies Inc.). The Cable Health Network and Daytime Service programming networks were thereby merged into a new programming service called Lifetime. Also, in 1983, Viacom entered into an agreement with subsidiaries of Warner Communications Inc. ("Warner") and the American Express Company ("American Express") whereby effective in September, 1983 the business of Showtime Entertainment was merged with the business of the The Movie Channel (formerly operated by Warner and American Express) as Showtime/The Movie Channel Inc. ("ST/TMC") (now SNI). (The Movie Channel commenced operation in 1973 as the The Starchannel and was first distributed nationally as The Movie Channel in 1979.) Viacom contributed to this venture its 100% ownership in Showtime Entertainment in exchange for 50% of the equity in ST/TMC and other consideration. Warner held 40.5% and American Express held 9.5% of the remaining equity in ST/TMC.

- q/ In September 1983, Warner and Viacom formed a new corporation, Showtime/The Movie Channel. Also, Warner Amex Satellite Entertainment Co. created Home Sports Entertainment (HSE) internally in 1983.

- r/ Effective January 1, 1983, Cablevision's program affiliate Rainbow Programming Enterprises (RPE) formed a partnership with New England Prime Cable Network which acquired all the assets of PRISM New England, a sports-movie service serving New England. The movies were discontinued and the service was renamed SportsChannel New England. RPE acquired a 40% pre-payout and 50% post-payout interest in the service consisting of both general and limited partnership interests. On June 1, 1983, sold to subsidiaries of the Washington Post, 50% of RPE's interest in SportsChannel New York and SportsChannel New England. In October 1983, RPE sold its remaining interest in the Playboy Channel to Playboy Enterprises, but continued to distribute the Playboy Channel until April 1986. On October 18, 1983, RPE and a subsidiary of the Washington Post Company formed a partnership which acquired The PRISM Company, the owner of PRISM, a sports-movie service serving the Philadelphia area. RPE acquired a 50% general partnership interest in the service.

- 1984

- s/ TCI sold interest in Spotlight Service, Inc.

- t/ In February, ST/TMC, owned by Viacom, acquired the assets of the Spotlight Partnership from its cable operator owners (Cox Cable Communications, Inc., TCI, Storer Communications Incorporated, and Times-Mirror Cable Television, Inc.). Spotlight was a pay programming service marketed to the cable systems owned by the cable operator owners. Pursuant to the asset purchase, subscribers to the Spotlight service became subscribers (subject to their approval) to either Showtime or The Movie Channel. Also, in 1984, Viacom launched Lifetime.

- u/ On July 16, 1984, Warner sold Home Sports Entertainment (HSE) to a venture controlled by Houston Sports Associates. The assets of MTV, VH-1 and Nickelodeon were transferred to a new corporation, MTV Networks, Inc. ("MTVN"). Pursuant to a public offering, 5,125,000 shares of MTVN were sold to the public in August. Warner and American Express collectively retained ownership of 66.1% of the outstanding capital stock of MTVN.

- v/ Cox sold holdings in Spotlight.

- w/ On January 1, 1984, RPE, owned by Cablevision, and a subsidiary of the Washington Post Company formed a partnership which entered into a rights agreement with, and succeeded to the business of SportsVision of Chicago, which operated a sports programming service in the Chicago area called SportsVision.

1985

- x/ **Viacom** increased its ownership in Cable Health Networks, Inc. (the one-third general partner in the Lifetime service) to 80%. Also, in 1985, Viacom purchased from Warner the 50% equity interest in ST/TMC that it did not then own (Warner had previously purchased the 9.5% interest of American Express). In January, VH-1 was launched by MTV as a music video service, programmed to complement MTV. In July, Nick-at-Nite was launched by Nickelodeon extending Nickelodeon's service to 24-hours for certain subscribers. Nick-at-Nite serves general audiences. In November, **Viacom** acquired from Warner 66.5% of the ownership interest in MTV Networks Inc. ("MTVN"), owner and operator of MTV, Nickelodeon and VH-1. (Warner had previously purchased from American Express its interest in the venture which operated these services). The remaining 33.5% of MTVN shares were publicly held. In November, **Viacom** through a division of SNI, initiated a national satellite delivered pay-per-view service, Viewer's Choice, which enabled cable subscribers to view theatrical features and special events on a program-by-program basis.
- y/ HBO Inc., owned by **ATC**, began acquiring stock in Black Entertainment Television.
- z/ In August of 1985, **Warner** acquired AMEX's interest in MTVN. Warner's interest in MTVN was sold to Viacom in November of 1985.
- aa/ On January 25, 1985, RPE, owned by **Cablevision**, and The Washington Post Company sold to subsidiaries of CBS one-third of their interests in SportsChannel New York, SportsChannel New England, PRISM and SportsChannel Chicago. This transaction left RPE with a 33.5% general partnership interest in SportsChannel New York, a one-third general partnership interest in PRISM and SportsChannel Chicago and 13.33% pre-payout and 16.66% post-payout interest in SportsChannel New England. Also, on January 25, 1985, RPE sold to subsidiaries of CBS, 50% of RPE's interests in AMC and Bravo, leaving RPE with a 50% general partnership interests in such services.

1986

- bb/ **TCI** acquired 49.22% of the Discovery Channel; 100% of X*press Information Services, Ltd.; and, 33.3% of the Z Channel (premium sports and movie channel). Acquired and sold Uptown (premium channel).
- cc/ In March, **Viacom** acquired the remaining 33.5% of the shares of MTVN, a process whereby MTVN became a wholly-owned subsidiary of Viacom (MTVN was subsequently merged into Viacom and currently exists as one of its operating divisions, MTV Networks). In June, a second national pay-per-view channel, Viewer's Choice 2, was launched by Viewer's Choice.
- dd/ **ATC** began acquiring stock in the QVC Network and the CVN Network. HBO Inc. created Festival and launched it in May.
- ee/ **Warner** and Investors acquired equity interest in CVN over the period from October 21, 1986 through May, 1989.

- ff/ Cox acquired 15% of America's Shopping Channel and 9.9% of the Discovery Channel.
- gg/ In December 1986, Cablevision acquired certain limited partnership interests in RPE from outside investors, so that Cablevision now owns a 95.68% pre-payout interest and a 94.77% post-payout interest in RPE.
- hh/ NewChannels acquired over 3 million shares in the Discovery Channel.

1987

- ii/ TCI acquired 50% of American Movie Classics.; 36.6% of the Fashion Channel Network, Inc.; 10.5% of the Movietime Channel, Inc.; 22.7% of QVC Network, Inc.; and, 37.5% of Think Entertainment. Acquired interest in Turner Broadcasting System, Inc. Launched KBL Entertainment, Inc. (regional sports). Sold interest in the Z Channel.
- ii/ ATC began acquiring stock in the Pay-Per-View Network, Inc.; Turner Broadcasting; and, the Fashion Channel; sold interest in the USA Network.
- kk/ Warner's interest in TBS was acquired over a period beginning in June, 1987 through May, 1988.
- ll/ Continental acquired 12% of Viewers Choice, Inc.
- mm/ Cox acquired an additional 15% of America's Shopping Channel; 3.6% of the Discovery Channel; and, an initial 20% of Viewers Choice.
- nn/ Comcast acquired various amounts of stock in the QVC Network during May and June.
- oo/ On January 1, 1987 and August 25, 1987, Cablevision's programming affiliate Rainbow Programming Holdings, Inc. (RPHI) acquired from The Washington Post Company and CPS, all the foregoing interests previously sold. As a result, collectively, RPE and RPHI owned 100% of the partnership interests in such companies. Also on January 1, 1987, RPE sold to a subsidiary of Tele-Communications, Inc. 50% of RPE's interest in AMC, leaving RPE with a 50% general partnership interest.
- pp/ NewChannels acquired another 4 million shares in the Discovery Channel and 5.7% of the outstanding shares of the Information Channel. NewChannels was an original investor in the Pay-Per-View Network when it purchased 20% of the shares in July.

1988

- qq/ TCI acquired 20% of Prevue Guide, Inc.; 100% of Southern Satellite Systems, Inc.; TEMPO Sound, Inc. and TEMPO Television, Inc.
- rr/ In November, certain assets of Viewer's Choice 1 and 2 were combined with Home Premiere Television and Viacom thereby acquired what is currently a one-ninth interest in PPVN which through a subsidiary owns

and operates Home Premiere Television (now called Viewer's Choice), a national pay-per-view service. Together with Viacom, PPVN is owned directly or by subsidiaries of these other companies: Continental Cablevision Investments, Inc.; Cox Communications Inc.; Telecable Corporation; Newchannels Corporation; ATC-PPV Inc.; Walt Disney Pictures and Television; Times-Mirror Cable Television; and Comcast Cable Communications, Inc. (The latter three entities became stockholders in PPVN subsequent to Viacom's obtaining its original one-sixth interest.) Viacom is one of nine board members. Also in 1988, Viacom further increased its ownership in Cable Health Network, Inc. to 100%.

- ss/ **ATC** acquired interests in Movietime, Inc. and the Sunshine Network.
- tt/ **Warner's** interest in Movietime was acquired over a period beginning February 16, 1988 through November 1, 1989.
- uu/ **Continental** acquired 11% of the Movietime Channel, Inc.; 18% of the Sunshine Network, Inc.; and, 33% of the Z-Channel Limited Partnership.
- vv/ **Cox** acquired an additional 0.3% of the Discovery Channel; sold 20% of common voting stock of Viewers Choice but lent company over \$2 million to retain a total of 12.5% ownership; and, acquired an initial interest in Movietime.
- ww/ **Comcast** purchased 14,000 shares of common stock in the Sunshine Network, Inc.
- xx/ On April 19, 1988, the partners not affiliated with RPE, owned by **Cablevision**, and RPHI withdrew from the partnership in SportsChannel New England. As a result, RPE and RPHI collectively own 100% of the general and limited partnership interests in the service.
- yy/ **NewChannels** acquired over 3 million shares in the Movietime Channel Inc.; acquired additional shares in the Pay-Per-View Network; and acquired stock in the Video Jukebox Network Inc.

1989

- zz/ **TCI** acquired 60% of Affiliated Regional Communications, Ltd.; 11.7% of International Cablecasting Technologies, Inc. Founding investor in Prime Time Tonight, Inc. (35%). Launched TCI Bay Area Sports, Inc.; TCI Northwest Cable Sports, Inc.; and, TCI Sports, Inc. Sold TEMPO Sound, Inc. and TEMPO Television, Inc.
- aaa/ **Viacom** and TCI entered a letter of intent with respect to TCI's purchase of a 50% equity interest in the business of SNI (formerly ST/TMC). Also, in 1989, Viacom (on behalf of a subsidiary yet to be formed) and TCI Bay Area Sports, Inc. agreed to form a partnership to operate a regional sports network in the San Francisco Bay Area and the surrounding counties. In the same month Viacom and TCI Northwest Cable, Inc. agreed to enter into a separate partnership to operate a regional sports network in the Seattle/Tacoma, Washington area. Definitive agreements are currently in negotiation. The PSN service

for San Francisco was launched in September 1989, sports programming, which at the time was not formally part of Prime, was launched in 1988 in Seattle/Tacoma prior to a formal agreement between Viacom and TCI to form the Prime partnership.

bbb/ Festival ceased operations in December. In October, ATC's interest in CVN were converted to QVC as a result of the merger of QVC and CVN. The Fashion Channel ceased operation. HBO created the Comedy Channel and launched it in December.

ccc/ On October 31, 1989, Warner's interest in CVN were converted into an interest in QVC pursuant to a merger of CVN with QVC. Warner's interest in QVC was acquired over a period from July through December, 1989. Also, in 1989, HSE was sold to a partnership made up of affiliates of Telecommunications, Inc. and Daniels & Associates. Warner holds 23,171 shares of Class B common stock of The Fashion Channel Network, Inc., representing approximately 0.93% of the outstanding shares. The Fashion Channel ceased operations in 1989.

ddd/ Continental sold holdings in the Z-Channel.

eee/ Cox acquired an additional 10.76% of the Discovery Channel resulting in a total ownership of 24.6%; lent America's Shopping Channel over \$3 million; acquired additional stock in Movietime resulting in a 11.4% total interest; and, acquired an initial 12.5% interest in Prime Time Tonight.

fff/ Comcast acquired additional stock in the QVC Network; purchased stock and note in the Pay Per View Network Holding Co.

ggg/ On March 20, 1989, RPHI (a subsidiary of Cablevision) acquired certain of the assets of Z Channel a sports-movie service serving the Los Angeles area. The movies were discontinued and the service was renamed SportsChannel Los Angeles. On April 20, 1989, RPHI acquired a 49.5% general partnership interest in CNBC in connection with NBC's acquisition of interests in programming services from RPI and RPE described below. The sports channel in Chicago (SportsVision) continued until 1989 at which time the service was renamed SportsChannel Chicago. RPE acquired a 50% general partnership interest in the service. Also on April 20, 1989, RPE and RPHI sold to subsidiaries of NBC, 50% of RPE's and RPHI's respective interests in all the SportsChannel services, Bravo and News 12 Long Island, leaving RPE and RPHI collectively with a 50% general partnership interest in SportsChannel New York, Prism, SportsChannel Chicago, SportsChannel Florida, SportsChannel Ohio, SportsChannel Los Angeles, SportsChannel America, Bravo and News 12 and a 50% general and limited partnership interest in SportsChannel New England.

hhh/ NewChannels acquired more stock in the Movietime Channel now totaling 11.3% of the outstanding stock; acquired more stock in the Video Jukebox Network Inc. now totaling 16% of the outstanding shares; acquired more stock in the Discovery Channel now totaling 24.8% of the outstanding shares; and acquired 12.5% of the outstanding shares in Prime Time Tonight.